THE Public Interest

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The Past and Future of Welfare Reform

Douglas J. Besharov

The Independent Mind of Edward Banfield	*James Q. Wilson*
Psychiatry in the Courtroom	*Douglas Mossman*
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Biotechnology: A House Divided

Leon R. Kass • Diana Schaub • Charles Murray
William A. Galston • J. Bottum

BOOKS IN REVIEW:

Jay Winik on Eliot Cohen

Ken I. Kersch on jury reform • *Robert Goldwin* on Robert Dahl

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Editorial Office
1112 16th Street, NW, Suite 140
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Subscription Office
The Public Interest, Department PI
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To our readers:

It is time for a change at *The Public Interest*. Founded by Irving Kristol and Daniel Bell in 1965, it has been co-edited by Kristol and Nathan Glazer since 1973. It has been a happy and successful partnership, but we are now elderly citizens and the magazine is clearly entitled to a new infusion of talent.

We have therefore resigned as editors and have named Adam Wolfson as Editor of *The Public Interest*. Adam has been with us since 1994 and has earned our trust and confidence as an editor and our respect as a thinker and writer. We are fortunate that he is willing to assume his new position and responsibilities.

As for us, we shall be available to collaborate with Adam as "Senior Editorial Associates"—a unique, if awkward, title.

Irving Kristol
Nathan Glazer

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The past and future of welfare reform

DOUGLAS J. BESHAROV

WITH the passage of the welfare reform law of 1996, 60 years of federal welfare policy was abruptly reversed. The Temporary Assistance for Needy Families program (TANF) ended the legal entitlement to benefits, mandated that a large percentage of recipients work, and imposed a five-year time limit on the receipt of federally funded benefits. Since then, welfare caseloads have fallen sharply, and the percentage of single mothers working has risen dramatically. And despite the concerns of many—on the left and the right—there has not been a substantial increase in material hardship. In fact, for most single mothers, incomes have risen.

With this track record, one would think that TANF's reauthorization, due by September 2002, would have been uncontroversial. But it did not work out that way. Faced with

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This essay is adapted from the author's Bradley Lecture, delivered at the American Enterprise Institute on October 7, 2002.

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fierce partisan disagreements, Congress adjourned without reauthorizing the law. Instead, it passed a short-term extension, so that the reauthorization battle will continue at least into 2003.

The stalemate in Congress was triggered by sharp differences over whether to expand work requirements or to increase aid to low-income families not on welfare in the form of child care and other benefits. These two issues have been the main poles of the welfare reform debate for decades and promise to be the continuing source of contention even after TANF is eventually reauthorized. Before turning to these matters, however, let us begin by assessing welfare reform's achievements and failures over the last several years.

A short history

The Aid to Families with Dependent Children program (AFDC) was created in 1935, as part of the Social Security Act of that year. AFDC was aimed at families where the father was unavailable to provide support due to his death, disappearance, or disability. For over half a century, it seemed that caseloads could only grow. Through the 1960s and early 1970s, the focus of progressive social policy was to expand eligibility and to ensure that eligible families received benefits. Between 1960 and 1977, the size of the program more than quadrupled, from about 800,000 families to over 3.5 million families (see figure 1 on next page).

Even those opposed to expanding welfare coverage should appreciate that much of the increase came with the demise of Jim Crow laws and practices that wrongly denied government benefits to African-American and, to a lesser extent, Mexican-American families. In the summer of 1968, as a civil-rights worker in Mississippi, I saw black families given bus tickets to the North instead of welfare assistance, and black children denied admission to public hospitals though they were suffering from malnutrition and other serious illnesses.

In any event, by 1994, welfare caseloads had reached a historic high of 5.1 million families, representing about 15 percent of American families with children. But that year caseloads began a seven-year decline that eventually reduced

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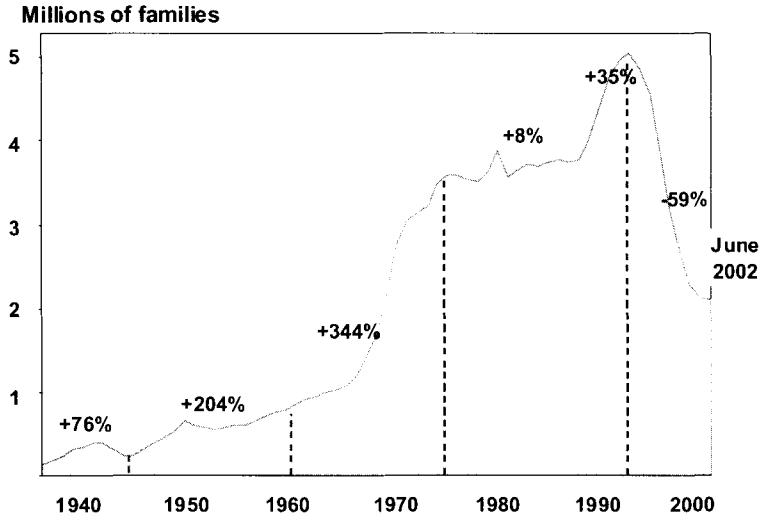
Figure 1. Welfare's Growth and Decline



the national rolls by about 60 percent. Caseloads dropped almost everywhere—in suburbs, rural areas, and even most inner cities—with substantial declines for whites, blacks, and Hispanics alike. The number of white families on welfare showed the steepest decline, falling by 63 percent, while the number of black families on welfare fell by 52 percent, and the number of Hispanic families by 44 percent, with immigration presumably countering what would have been a larger decline. No one predicted a decline of this size and scope, not even the strongest proponents of the original TANF legislation.

Around July of 2001, caseloads stopped declining in most states and started rising again, most likely because of the weakening economy. But although about 10 states experienced caseload increases of 10 to 20 percent, as of June 2002, the nationwide rise has been surprisingly modest.

Was it welfare reform?

Why the astounding decline in welfare caseloads? It suited the purposes of Bill Clinton and the Republican Congress, as well as most governors, to attribute the decline to welfare reform. That way, they could claim credit for it. But although welfare has certainly changed in many important ways, it has

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not changed nearly enough to account for even half of that 60 percent caseload decline.

One of the most significant achievements of welfare reform was to change the culture of welfare offices. Case workers went from simply giving checks to poor families to encouraging applicants and recipients to find jobs or other sources of support. In most welfare offices, this new emphasis is called "work first," and usually includes a mandatory "job search" by applicants as well as recipients, often combined with job clubs, classroom instruction on job-seeking skills, access to phone banks, and peer support. (These requirements are often backed up by benefit cuts against those not "playing by the rules," but relatively few families are actually thrown off welfare.) One-time cash payments to help individuals get or keep a job (for instance, money for car repair) are also available. A sign stenciled on a New York City Job Center summed up the pro-work atmosphere in most offices: "Be prepared to work, or be prepared to leave."

Many welfare agencies also offer work-preparation programs that provide short-term education, training, or work experience. However, participation in such programs is limited, and not much different than in the past. In an average month in 2000, only about 5 percent of TANF families included an adult receiving education or training.

These two programmatic elements of welfare reform—a "work first" policy and limited education and training—are unlikely to have caused the large caseload decline. Before TANF, even the most richly funded welfare-to-work experiments rarely achieved reductions of even 10 percent. (Such experiments cannot measure "entry effects," that is, the number of mothers deterred from applying for benefits because of program rules and procedures. But there is no reason to believe that such "entry effects" would have accounted for the remainder of the decline.)

Mandatory work, often called "workfare," also cannot explain the decline. Despite popular impression, few states operate large-scale mandatory work programs in which recipients perform public service activities in return for their welfare checks. In an average month in 2000, only about 3 percent of

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TANF families included an adult in a mandatory work program—and most of these were in either New York City, Wisconsin, Ohio, or New Jersey.

The decline also cannot be explained by the increase in welfare recipients who are combining work and welfare. Under AFDC, the federal government established what is called an "earnings disregard," that is, a set amount of earnings that is not taken into consideration in determining the welfare grant. For all practical purposes, the AFDC earnings disregard was limited to the first $90 in earnings, after which benefits were reduced dollar-for-dollar as earnings increased—a 100 percent marginal tax rate.

Under TANF, however, individual states set the amount of their earnings disregards, and most greatly liberalized them. The typical earnings disregard is now on the order of 50 percent of earnings, and a few states even disregard *all* earnings up to the poverty line for a specified period of time. As a result, the proportion of recipient families in which an adult is combining work and welfare has more than doubled, up from about 8 percent in 1994 to about 16 percent in 2000.

Some people assume that this increase in those combining work and welfare was an important factor in reducing caseloads—that recipients became more employable after being introduced to the world of work and building their confidence and job skills. However, careful studies of the impact of "income supplement programs"—that is, programs that allow recipients to earn money while staying on welfare—usually show an increase in caseloads. Even when such programs have been combined with time limits or work requirements, they have rarely resulted in a caseload reduction of more than 5 percentage points.

In the face of these realities, most experts conclude that welfare reform reduced caseloads because it changed the expectations and thus the "atmospherics" of the program—that current and potential recipients had responded to the new, pro-work message. That is the most plausible explanation available, but, even so, it is unlikely that an emphasis on work alone has reduced national caseloads by 60 percent—especially since some of the jurisdictions with very large

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declines made relatively few policy or programmatic changes.

The economy of work

Two other factors—a strong economy and sharply increased aid to low-income, working families—almost certainly contributed as much (if not more) to the caseload decline as welfare reform. Academic and government researchers have used national data sets to estimate the relative impacts of these factors. Looking across all the studies, and discounting the weakest ones, the most reasonable conclusion is that, although welfare reform was an important factor in reducing caseloads (accounting for 25 to 35 percent of the decline), the economy was probably more important (35 to 45 percent of the decline), and expanded aid to low-income, working families (primarily through the Earned Income Tax Credit, or EITC) was almost as important as welfare reform (20 to 30 percent).

Defenders of welfare reform argue that such studies are highly variable and depend on various subjective assumptions (which is true), and that historically, strong economies have not led to reductions in welfare rolls. This latter point, however, is not quite true.

First, during earlier economic expansions, divorces and nonmarital births were both rising sharply, while at the same time barriers preventing single mothers (especially African-American mothers) from going on welfare were falling. For example, until the 1960s, many states had "suitable home" or "unfit mother" rules that excluded unwed mothers (and sometimes divorced mothers) from welfare. Since these mothers were disproportionately African American, the three-decade liberalization of these and other rules allowed hundreds of thousands of black families to receive the benefits to which they were legally entitled.

Second, according to some measures, welfare recipiency actually did decline during the economic expansion of the 1980s, just not by a lot. For example, between 1982 and 1990 (the beginning and end points of that decade's economic expansion), the percentage of single mothers on welfare fell from 56 percent to 52 percent. (Population increases raised the total caseload, thus obscuring declines in the rate of welfare recipiency.) The strong economy of the 1980s did not draw more single mothers off welfare and into the workforce

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because employers first hired married mothers, who tended to have more job skills. Over two million additional married mothers started working full time during the 1980s expansion, raising the percent of married, working mothers from about 34 percent to about 44 percent.

Third, and most important, the 1990s economy was much more favorable to low-skilled, single mothers than was the 1980s economy. In the 1990s, employers essentially ran out of married mothers to hire (even though an additional 1.3 million married mothers started working full time), and so employers then turned to single mothers. Between 1994 and 2001, the increases were striking: 31 percent more divorced and separated mothers and 55 percent more never-married mothers were working full time.

The increase in work among divorced and separated mothers, and especially among never-married mothers, had a tremendous impact on welfare caseloads. In 1994, these two groups of single mothers made up 82 percent of the national AFDC caseload. (Moreover, never-married mothers are the mothers most likely to be long-term welfare recipients, because they tend to be the youngest and least educated of the three groups.)

Based on wage data for entry-level or low-skilled workers, it appears that the strong economy drew these mothers into work, rather than welfare reform pushing them out. For example, even as over a million more single mothers were going to work, the average hourly wages for those single mothers in the lowest wage quartile were rising, suggesting unmet demand in the low-skills job market. Between the fourth quarter of 1996 and the second quarter of 2001, their hourly wages climbed 17 percent, from $6.57 to $7.71 (in 2001 dollars). These wage gains came on top of a 213 percent increase in the EITC between 1990 and 1996, from $1,276 to $3,997 (in 2001 dollars). Quite a double-barreled incentive to get a job.

Life after welfare

How did these three factors—"work first," a strong economy, and increased aid to low-income families—combine to reduce caseloads by 60 percent? Many experts use a "push/pull" metaphor to describe the dynamic: Welfare reform pushed single mothers off assistance while the economy pulled them into jobs.

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That is an incomplete explanation, however, because it does not account for alternative sources of support available from other government programs, as well as from relatives and boyfriends, that enabled many mothers to leave welfare without working.

Contrary to popular impression, only about 40 to 50 percent of mothers who have left welfare are working regularly, that is, have steady, full-time employment. According to surveys in various states, these mothers are earning between $6 to $8 an hour. Assuming a national average of $7 per hour, that's about $14,000 a year for full-time, full-year employment.

An income of $14,000 is not a lot of money, of course, especially for a woman with two children (about the average number of children for those leaving welfare). But various government programs help make it pay for her to work. In 2001, a single mother with two children earning this salary would be entitled to about $3,800 from the EITC, up to $2,700 in food stamps, and about $1,200 in subsidized school meals for both children. After taxes, that comes to a total of almost $21,000. If she also receives subsidized housing, add another $3,000 or more. In addition, her children would remain eligible for Medicaid (an average of $2,428). Moreover, although by working she would have added costs, her biggest cost—child care—would generally be covered, and most states would also provide transportation assistance.

This combination of earnings and government benefits is not enough for a life of middle-class comfort, but it is much better than being on welfare. And this is probably why the majority of those surveyed invariably say that they are better off after having left welfare. Moreover, most studies show that their earnings rise the longer they stay off welfare, presumably because they are gaining job skills and developing a positive work history.

What about the other 50 to 60 percent of former welfare mothers who are not working regularly? About 10 to 15 percent appear to be working part time, while about 20 to 35 percent are not working at all. Very few families in either group end up moving into shelters or becoming homeless. (Families with children are unlikely to live on the streets and, when they do, it is for a very short time before the authorities find them and place them in a shelter.) Instead, mothers who

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work irregularly are assisted through other government programs (mainly food stamps, housing, and Supplemental Security Income, or SSI) or by friends and relatives. Often these women live with others who support them, although this is one of the least acknowledged or understood aspects of low-income life. While the data are incomplete, it appears that, on average, these mothers lived in households that saw a modest rise in income (probably because others in the household were earning more thanks to the strong economy).

The remaining mothers who have left welfare, ranging between 15 to 30 percent, cycle on and off welfare as they alternately find a job or someone to support them, and then lose the job or support. These mothers rightly concern us the most because they often have no one to turn to for help when they suffer setbacks. Although there are only limited data about this group, it appears that they have substantially lower total household incomes than those who leave welfare and stay off—as well as lower incomes (including other benefits) than they had before they left welfare. In a Milwaukee study, the difference was $3,000 per year less: $7,450 versus $10,460 per year. Although it is probably not correct to characterize their lives as desperate, grim would not be an exaggeration.

Why did these divergent groups leave welfare? Very roughly, for those who left for work, it appears that the strong economy combined with increased nonwelfare aid made work possible, while "work first" policies encouraged them in that direction. Those who left without employment (or at least without full-time employment) probably found the added hassle of the new welfare policies not worth the trouble because they had other sources of support.

Conservatives and liberals

TANF was passed only after an acrimonious debate in Congress about the nature of welfare dependency and the likely impact of ending the welfare entitlement and emphasizing work instead. Taking a broad view of what happened, one would have to say that both conservatives and liberals were proven right—and wrong.

Conservatives were proven right that the welfare system itself encouraged dependence and that many welfare mothers

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could instead hold down jobs or rely on others for assistance. A pro-work welfare system of limited, short-term assistance successfully pushed many mothers off welfare.

Furthermore, welfare reform did not produce a social catastrophe, even in the inner cities. Despite intensive investigation by liberal policy analysts and journalists, no substantial increase in hardship has been documented. The one worrisome exception is the group of mothers who seem to be cycling on and off welfare. They appear to be having a difficult time under welfare reform, and their numbers could easily increase if the economy continues to weaken. Already, this group seems to have grown significantly. Caseload churning, an indirect indicator, has been rising rapidly. In 2001, for example, the national TANF caseload almost completely turned over, meaning that the number of families that entered welfare and left was almost equal to the total number of recipients. This high rate of churning—about 50 percent higher than the historic rate—signals great instability in the caseload. If exit rates decline or entry rates rise even a little, caseloads could rise quickly.

Many of the arguments of liberals have also been vindicated, especially regarding the central importance of a strong economy. The high demand for entry-level workers has been a major cause of the decline in caseloads—the only question being whether its impact was greater than that of welfare reform.

Liberals were also right about the difficulty that most mothers leaving welfare would have in becoming financially self-sufficient. With average wages of $6 to $8 an hour, even those working full time have relatively modest incomes. Only the expanded aid now available to low-income, working families (especially child care and the EITC) makes it worthwhile for them to leave welfare. And, of course, some of these women, especially those cycling on and off welfare, seem to be doing worse than before.

More fundamentally, the huge drop in welfare dependency and the rise in work does not seem to have substantially changed the lives of these families. Almost all the social indicators that started heading in the right direction in the early and mid 1990s seem to have stopped improving, and some have started to retreat. Since these improvements began be-

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fore welfare reform, it is difficult to attribute them to reform. For example, although some commentators have pointed to a declining rate of nonmarital births as one of the most striking results of welfare reform, the picture is actually quite mixed. Nonmarital births started declining in 1994, about the time that the first welfare-reform waivers took effect and at least two years before TANF's implementation—and they declined only through 1997, after which they started climbing again. Similarly, there has been no detectable increase in marriage rates, although since 1994 cohabitation among couples with children seems to be up by at least a third.

Of course, it may be too early to see the impact of reduced welfare dependency on conditions that took root over many decades. Working at a regular job may change a mother's outlook on life, but earning enough to make ends meet would also surely help—and that may take time as she accrues work experience. A successfully employed mother may be an important role model for her children, but it may take a decade or more before a change in their behavior is evident.

Thus if caseload decline is the measure, then welfare reform, in contributing to this decline, can be counted a success. But if self-sufficiency and stronger families are the test, then, at best, the jury is still out. Indeed, by all appearances, much more needs to be done to reach these fundamental goals.

Mandating work?

Mandatory work, or "workfare," has long been controversial. Supporters see workfare as a way to build the job skills of recipients who have not had much work experience, while fulfilling the reciprocal obligation between recipient and government. It does not hurt that workfare "smokes out" recipients who are working (under the table) unbeknownst to the agency. Workfare also encourages recipients who can find a job to do so, since their choice is either workfare or a "real job," as they put it. And even if they do not succeed in getting jobs, purposeful activity rather than inactivity may be better for most welfare mothers.

Until TANF, opponents of mandatory work were able to water down the work requirements that since the 1960s have regularly been proposed in Congress. In the 1970s, they suc-

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ceeded in labeling workfare as "slavefare." It was not just liberals that stymied workfare programs. State leaders, even very conservative ones, also shied away from workfare programs because of the costs and administrative challenges involved and the political controversy they generated. Invariably, unions opposed placements where real work is performed—fearing that they would displace existing state or municipal union employees.

TANF was supposed to have finally settled the issue, by imposing seemingly tough "participation standards" on recipients. By 2002, 50 percent of all welfare families that included an adult were required to be in work activities for at least 30 hours a week (20 hours per week for a single parent with a child under age six). The requirements were even stiffer for two-parent families, with 90 percent of parents required to participate for at least 35 hours a week (or 55 hours per week if the family is receiving a child-care subsidy). But as mentioned above, in 2000 only about 3 percent of the national caseload was in fact in mandatory work programs, and only 16 percent was participating in any work-related activity.

What happened is that because of the massive caseload decline, various TANF provisions excused states from having to establish mandatory work programs. A state's caseload decline is credited toward its TANF participation requirements, thereby lowering them. Since combining work and welfare also counts toward participation requirements, the large number of people in this category satisfied whatever was left of the TANF requirement regarding single mothers on welfare. (In many states, however, these factors were not sufficient to meet the higher participation requirements for two-parent families. But instead of creating mandatory work programs for them, many states simply transferred their two-parent welfare families to what are called "separate state programs" that had no participation requirements.)

Few states have been interested in taking on the challenge of a mandatory work program—especially since welfare caseloads seemed to melt away without their doing so. Unfortunately, the absence of true mandatory work threatens to undermine the new pro-work atmosphere that contributed

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to the caseload decline. The pro-work message rests on the enforceability of two related rules: First, recipients must pursue employment in good faith or face real consequences; and second, recipients hitting the five-year limit on benefits will either be dropped from welfare or suffer other repercussions. Both rules are vulnerable to being seen as bluffs if they are not enforced. And, as of now, they are not—unless the agency determines that the recipient has other options available.

Welfare reform has been accompanied by a lot of dramatic rhetoric among policy advocates about throwing families off welfare for not complying with work requirements or when the time limit is reached. But actual practice is much different. No state seems to have the political or moral stomach (rightly, I would add) to deny benefits to a single mother with children if she seems to be playing by the rules and looking for a job in good faith.

As TANF has taken hold, welfare agencies have grown more reluctant to decide that recipients have options other than welfare. First, those mothers still on welfare appear to be less employable than those who have left, making it increasingly difficult for welfare workers to determine whether recipients are really looking for a job. The tendency is to give mothers the benefit of the doubt, and not enforce strict work requirements. The economic downturn has made agencies even more accepting when recipients say they cannot find a job. Second, the five-year time limit on benefits is beginning to bite. Tens of thousands of families have reached their limit, and many more will do so in the next year or two. Some states have exempted all those hitting their limit or provided an alternate source of assistance, sometimes on the grounds of the weak economy. If enough recipients are simply exempted from mandatory work-related activities and time limits, welfare reform may come to be seen as a grand bluff. Imposing mandatory work is the only humane alternative to the termination of benefits when a single mother claims that she cannot find a job.

Because so little work or even work-related activity has been required under TANF, President Bush's bill reauthorizing TANF proposed major increases in both the required participation rate and in the required hours of work. Most con-

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gressional Democrats opposed the increases, and many apparently even wanted to water down the current hollow requirements. But surely some substantial work requirement is necessary, if only as an alternative to a time limit (preferably under an explicit federal authorization).

Support for "working families"

Bill Clinton popularized the phrase "make work pay." His goal was to "ensure that no one with a family who works full time has to raise their children in poverty." Most liberals and, apparently, many congressional Republicans have taken up his cause by expanding eligibility and benefits for programs not limited to welfare families. This attractive goal may make sense for single mothers with only one or two children. But as the number of children in a low-skilled household rises, an income above the poverty line becomes impossible to achieve without creating even larger disincentives to work and marriage—or spending tens of billions of dollars more a year to extend and slow phase-out rates to moderate-income families.

Work-related assistance to welfare families and those leaving welfare can mean the difference between a successful and an unsuccessful exit from welfare. But the expansions have already gone far beyond what would be needed to help families leave welfare (or avoid it in the first place).

Aid to working families not receiving cash welfare is at its highest level since the Great Depression. Between 1984 and 1999, total means-tested spending on families with children under 18 that are *not* part of AFDC/TANF rose fivefold, from about $20 billion to about $100 billion. (Compare that to the $60 billion or so spent on welfare families.) By 2001, total means-tested spending on families with children reached about $175 billion. The main programs are the EITC, food stamps, Medicaid, housing assistance, SSI, and subsidized school meals.

This increase was not primarily caused by a rise in population or a rise in poverty; rather, it was policy-driven. New programs were created and eligibility and benefits were expanded in many existing programs—and more are being proposed. Half of this increase came after the Republicans gained control of Congress in 1994.

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Over 40 million people in families with children now receive these non-TANF benefits, compared to only around 16.5 million in 1984. (These figures exclude other benefit programs for the disabled and the elderly.) That is nearly three times the number of people on welfare at its highest point in 1994 (14.2 million). Indeed, although there are ambiguities in the data, it appears that from 1996 to 1999 the total number of Americans in families with children not on TANF that received some other means-tested benefit rose by about 5.9 million (or 25 percent)—about as many as left welfare.

These figures show that Bill Clinton's promise to "end welfare as we know it" deserved more careful parsing than it received. Old welfare is largely gone, but new welfare is bigger and, for its supporters, better than ever. It is billions of dollars and millions of recipients larger—and it enjoys much broader public support because it is tied to "working families."

As an example of the political armor these programs for working families now enjoy, consider how in 1995, when the Republicans wanted to scale back some of the recent expansions in the EITC, Democrats successfully labeled the proposal a "tax increase." Never mind that the families affected did not pay any taxes.

Such expansions in social welfare spending attract many supporters. Low-income, working families are more sympathetic beneficiaries of aid than are nonworking welfare recipients. Most of us would like them to live more comfortable lives and have their children succeed. Unfortunately, as with welfare, the expansion of this non-AFDC/TANF aid often comes with unavoidable increases in work and marriage disincentives—and sets in motion a political dynamic of ever-increasing expansions of eligibility and benefits.

These programs are all means-tested, which means that they terminate at a particular income level. They are either phased out over a range of incomes or end suddenly. In either case, they in effect reduce recipient incomes as they reach the eligibility cut off. This is social welfare's version of the tax code's marginal tax rate—but it can be much steeper.

The cumulative marginal tax rates of means-tested programs often range from 55 percent to over 100 percent and can

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affect families with incomes as high as $40,000 or more (for a family of three), particularly for families that receive benefits from subsidized housing, child care, or the State Children's Health Insurance Program (SCHIP). Such marginal tax rates are much larger than those in the tax code, and can have a greater impact on behavior—whether work or marriage—because the loss in benefits represents a much larger percentage of family income.

Ironically, past efforts to encourage work have now increased the marriage penalties for low-income working mothers. Between 1986 and 1998, the marriage penalty associated with the loss in welfare benefits and increased taxes for a non-working mother marrying a man earning $15,000 per year fell by 75 percent, from about $6,000 to about $1,500. If, however, she was working and earning $10,000 per year, the marriage penalty would increase by 70 percent, from about $3,000 to about $5,000.

Given the complexities of the interactions involved, it is doubtful that most low-income couples fully understand or respond to these incentives. However, some groups, such as cohabiting couples, will see firsthand the difference marriage might make. Thus the debate over TANF's role in strengthening families and promoting marriage must take these incentives into account. Liberals and conservatives have made numerous proposals to reduce disincentives by slowing the phase-out rate of benefits. Unfortunately, such efforts require either reducing benefit and income-eligibility levels (which is unlikely to happen) or raising eligibility to yet higher incomes (and into the heart of the middle class), where they impose work disincentives and marriage penalties on far greater numbers of people, as well as cost much more.

Already, there are proposals from well-respected economists to extend the phase-out of benefits to incomes as high as $40,000 or $50,000. Some have suggested that married couples file separately, so that tax liability would depend on each individual's earnings. But this would cost tens of billions of dollars and would allow families with earnings above $50,000 to qualify. (That would take the subsidy well into the middle class, since, in 2001, median family income was about $51,000.)

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Toward a European welfare state?

This is not the place to attempt complex social accounting, but these new middle-class recipients will not necessarily gain from such massive income transfers. Unlike the poor, they pay taxes, and unless the taxes of only the very rich are raised to pay for these new benefits, the middle classes will eventually be taxed more—as happened in European countries through, for example, their Value Added Taxes.

Moreover, every increase in benefits and eligibility is likely to trigger a subsequent expansion. The economists and others who propose extensions seem to think that, once these initial correctives are made, eligibility and benefit levels will remain unchanged. This process, however, could easily take on a life of its own, just as it did in Europe. As benefits go to more middle-class families, the middle class will become the chief advocate for further benefit expansions—encouraged by the provider industries that benefit from the government subsidies. Already, advertisements on TV and in magazines and newspapers urge voters to contact their elected representatives to support expansions of Medicaid for long-term care for the elderly and Medicare reimbursement.

Many on the left welcome this gradual expansion of benefits, seeing it as a way for America to develop a European-style social welfare state. And that, I think, is the danger. Continued expansions could trigger a political process that, as in western Europe, would saddle the economy with immense transfer systems that create troubling distributional inequities, stifle business investment, create huge work and marriage disincentives, and lock political parties into bidding wars to win over the middle class with yet more government subsidies.

I am not naive enough to advocate a major rollback of these programs. But surely this startling expansion of the welfare state should be debated, and alternative approaches considered. One priority might be to get rid of as many "cliffs"—abrupt ends to a subsidy—as possible, since they often seem to have the greatest negative impact on behavior. In addition, the phase-outs of various programs should be coordinated, with consideration given to their interaction as well as the needs of recipients. Some programs might even be merged.

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There should also be a conscious decision about the income levels at which work and marriage disincentives should be greatest. One reason for keeping the disincentives at lower incomes would be that other tools can be used to mitigate them. For example, a TANF-like work requirement might be attached to non-TANF benefits, thus effectively lowering the value of the benefit without reducing the amount of assistance provided to a low-income family. Or, the benefits might be time limited, thus retaining the incentive to leave welfare without creating long-term dependency on a new form of welfare.

The challenge ahead

The success of welfare reform demonstrates that even the most seemingly intransigent social problems are not beyond our reach. Just as the wrong policies or the wrong programs encouraged dependency, the right ones seem to have encouraged work. Welfare reform helped to reduce dependency and started many hundreds of thousands of single mothers on the path to self-sufficiency.

But the process of reforming welfare is far from complete, and more complex challenges remain ahead. Establishing true mandatory work programs may be the best way to protect the pro-work culture of contemporary welfare. But few states have ever wanted them. Minimizing the work and marriage disincentives of aid programs to low-income, working families is also an urgent goal, but that will require rationalizing and capping the growth of benefits to moderate-income families that vote. Expect the debate to be long and heated.

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Psychiatry in the courtroom

DOUGLAS MOSSMAN

OVER the past quarter century, the Supreme Court has increasingly sent the message to the nation's criminal courts that the imposition of the death penalty must take into account psychiatric evaluations and understandings of mental disorders. After the Court ruled in 1972 that sentencers could not have "untrammeled discretion" in how they imposed the death penalty, some states changed capital punishment statutes to make the death penalty automatic when homicides were committed under specific conditions. But in rulings issued between 1976 and 1982, the Court declared that this solution was unacceptable: States had to allow the judges and juries who issue death sentences to consider individualized information about each defendant. Sentencers must have the opportunity to learn about aspects of a defendant's character that might be offered in mitigation,

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and must weigh these factors when deciding a defendant's fate. Such mitigating factors include evidence given by mental health professionals of a defendant's broken home, childhood abuse, or adulthood emotional disturbances.

In the late 1980s, the Supreme Court was asked whether mental retardation should exempt a murderer from the death penalty. In *Penry v. Lynaugh*, a majority answered that it should not. The Court did say that letting jurors consider expert testimony about retardation and childhood abuse was crucial to a "reasoned moral response" about whether to impose a death sentence. But since at the time only two states prohibited the execution of mentally retarded persons, the Court concluded there was not "sufficient evidence at present of a national consensus" that executing such persons would be "cruel and unusual punishment."

Now, however, the Supreme Court has changed its mind. In *Atkins v. Virginia*, decided in June 2002, a majority of justices concluded that a "national consensus" had been reached in opposition to executing mentally retarded persons, and thus doing so would henceforth be unconstitutional. A practice that the Court found acceptable in 1989 had become "cruel and unusual punishment" 13 years later.

The *Atkins* decision has been attacked by strict constructionists—in his dissent Justice Scalia called it "nothing but the personal views of its members"—and by supporters of the death penalty. But death penalty opponents should also be wary of a decision that threatens to add more confusion and arbitrariness to an already capricious system and that seriously distorts the use of psychiatric diagnosis. To see why, one needs to consider the specifics of Daryl Renard Atkins' case, the Supreme Court majority's statements about his mental condition and diagnosis, the potential impact of these statements on the testimony of mental health experts, and the consequences for future sentencing determinations in death penalty cases.

Prelude to murder

Though Daryl Atkins was still a teenager when he committed murder, his intellectual limitations and social maladjustment had already been evident for years. Documents prepared by defense lawyers report that Atkins flunked and repeated

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second grade and received mainly Ds and Fs through seventh grade. School officials finally referred him for special-education testing, but he never was evaluated. He received all Fs in eighth grade, and despite not meeting requirements for entering high school, he was placed in the ninth grade, where he continued to perform poorly. He did better once he was placed in classes for "slow learners," but he still left school without graduating. By age 18—the age at which he was arrested for the murder of Eric Nesbitt—Atkins had not learned how to do laundry or cook meals for himself.

Atkins' serious behavioral problems began in early adolescence. At age 13, he was convicted of breaking-and-entering and petty larceny, and in eighth grade he started abusing drugs. At age 17, he was convicted of two counts of grand larceny. Several months before Nesbitt's murder, Atkins participated in two armed robberies; during one of these, he hit the victim on the head with a bottle. Two weeks before the murder, Atkins attacked a woman and shot her in the stomach.

At around midnight on August 16, 1996, having spent the day drinking alcohol and smoking marijuana, Atkins and William Jones drove to a 7-11 store, intending to rob a customer. Eric Nesbitt, an airman from Langley Air Force Base, became their victim. After robbing Nesbitt at gunpoint, they took him to a nearby ATM and forced him to withdraw $200. They then drove to a deserted area and shot him eight times. A videotape of the ATM transaction allowed police to identify and locate the two men.

Verdict in the courts

At Atkins' trial, each man claimed the other had shot and killed Nesbitt, but Jones's testimony was considered more believable, and the jury convicted Atkins of capital murder. During the trial's penalty phase, jurors heard about Atkins' previous criminal activity. The defense responded with one witness, a psychologist who testified about his interviews of people who knew Atkins, his examination of school and court records, and the results of an IQ test he had administered, on which Atkins scored only 59. Despite the psychologist's testimony that Atkins was "mildly mentally retarded" and would not pose a threat to others in prison, two Virginia juries sentenced Atkins to death.

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(A second sentencing hearing was held because the original trial court had used a misleading verdict form.)

When Atkins' lawyers appealed the death sentence, they did not claim that execution would be disproportionate to penalties imposed for similar crimes in Virginia. Rather, they argued that Atkins should not be sentenced to death because he was mentally retarded. A majority of the Virginia Supreme Court rejected this argument, relying on the U.S. Supreme Court's 1989 ruling in *Penry*, which stated that mental retardation could be a mitigating factor but not an absolute barrier to capital punishment. Two state supreme court justices disagreed, however, arguing that retarded persons are "less culpable for their criminal acts" than other offenders because they "have substantial limitations not shared by the general population. A moral and civilized society diminishes itself if its system of justice does not afford recognition and consideration of those limitations in a meaningful way."

Impressed by "the gravity of the concerns expressed" in the state supreme court's dissenting opinion, the U.S. Supreme Court agreed to hear Atkins' case and to revisit their 1989 decision in *Penry*. Between 1989 and 2002, the number of states with laws barring death sentences for mentally retarded persons had grown from two to eighteen, and legislatures in three other states had taken steps toward adopting such laws. Writing for the Supreme Court majority, Justice Stevens concluded that the passage of so many laws since the *Penry* decision showed that "much has changed" in the public's attitude about executing retarded persons. This "national consensus," which reflected "the evolving standards of decency that mark the progress of a maturing society," required the Court to change the stance it had adopted just 13 years earlier. Henceforth, a diagnosis of mental retardation would spare any murderer from the death penalty.

Footnotes in *Atkins* quote at length from diagnostic criteria that psychiatric organizations have developed to identify people with mental retardation. For example, the current diagnostic manual of American Psychiatric Association (APA) describes mental retardation as

> significantly subaverage general intellectual functioning ... accompanied by significant limitations in adaptive functioning in at least

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> two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety ... [with] onset ... before age 18 years.

Referring to such criteria, Justice Stevens argued that "by definition," persons with mental retardation "have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others." Although retarded criminals may know right from wrong, their mental deficiencies "diminish their personal culpability. Thus, pursuant to our narrowing jurisprudence, which seeks to ensure that only the most deserving of execution are put to death, an exclusion for the mentally retarded is appropriate."

Official praise

Mental health professionals have generally praised the *Atkins* decision. The APA and the American Association on Mental Retardation (AAMR) were among the many mental health organizations that had signed on to friend-of-the-court briefs urging the Supreme Court to ban executions of retarded persons. When the *Atkins* decision was announced, Doreen Croser, AAMR's executive director, was "deeply grateful" that the Supreme Court had stopped "this barbaric practice of killing persons who do not have the full intellectual capacity to understand the crime they committed.... This is an important day for disability advocates and for our country." Renée Binder, chair of the APA's Committee on Judicial Action, praised the decision "because it recognizes that there are objective and reliable determinations of whether an individual has mental retardation when the assessment is done by qualified professionals with substantial experience."

Binder's comment echoes points emphasized in the friend-of-the-court brief that the APA (along with the American Psychological Association and the American Academy of Psychiatry and Law) had filed with the Supreme Court. The brief argued that making psychiatric diagnosis the basis for a life-or-death legal decision would cause no scientific or practical problems. Both "incorrect diagnoses" and "unnecessary legal

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wrangling" could be the avoided "because mental retardation can be identified using time-tested instruments and protocols with proven validity and reliability." To diagnose a person as having mental retardation, professionals must find that "three necessary criteria are all present: significant limitations in intellectual functioning, significant limitations in practical or adaptive functioning, and onset before adulthood." Psychologists and psychiatrists can make "an objective determination" about whether the accused suffers from mental retardation using established measures of intelligence and adaptive functioning, so that clinicians "undertaking separate assessments should reach the same conclusion." Yet to anyone knowledgeable about mental retardation and the methods used to diagnose it, this assertion is remarkable.

Are all mentally retarded persons alike?

The "by definition" language of the *Atkins* decision suggests that persons with mental retardation form a group who are clearly distinct from nonretarded persons. In reality, mental retardation is an artificial category imposed on a spectrum of human capability. The diagnostic line that separates persons with mental retardation from those who are only well below average is a changing and arbitrary one.

One reason for this is that the criteria defining mental retardation, like most diagnostic criteria used by mental health professionals, often get revised. Over the past century, the AAMR has "updated" its definition of mental retardation 10 times. The most recent changes were published five days before the *Atkins* decision, in the tenth edition of the AAMR's official classification manual. Although psychiatric diagnoses are often revised to reflect new understandings, scientific breakthroughs, or the availability of new treatments, politics can play a role. An AAMR advertisement for *Mental Retardation: Definition, Classification and Systems of Supports* states unabashedly that the 2002 edition

> proposes a state-of-the-art method to define, classify, and support an individual with mental retardation. In view of the recent U.S. Supreme Court decision to ban execution of persons with mental retardation, the 10th edition is a timely and critical resource to

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the states as they strive to come up with a current and fuller definition of mental retardation.

The AAMR currently defines mental retardation as "a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills. This disability originates before the age of 18." This characterization appears reasonably close to the previously quoted definition used by the APA. Beyond this point, however, the two professional organizations begin to part in their definitions. The APA's diagnostic manual categorizes mental retardation according to its overall severity—that is, as either mild, moderate, severe, or profound. Since 1992, however, the AAMR has specifically rejected this approach. Instead, it encourages diagnosticians to examine patterns of limitations in a person's everyday functioning, and to describe the degree of support those persons need, which may be "intermittent," "limited," "extensive," or "pervasive."

If persons with mental retardation were members of a homogeneous, discrete biological or psychological category of persons, readily distinguishable from persons without mental retardation, professional organizations might have an easier time settling on clinical criteria for diagnosing the condition. There are retarded persons whose impairments make them easily identifiable: They have severe academic problems during childhood, limited communication skills, and need, even as adults, to be supervised at work or where they live. But such individuals make up only 15 percent of all retarded persons. Mildly retarded persons, who comprise the remaining 85 percent, usually develop social and work skills that enable them to minimally support themselves, though they need guidance in making complicated decisions.

The medical conditions that can cause intellectual impairment are countless. They include chromosomal defects, biochemical abnormalities, and infections that alter the brain's development before birth or during early childhood. In many cases of mild mental retardation, though, no specific medical reason for the person's limitations can be identified. Clinicians thus cannot use biological tests to decide whether a person is mentally retarded.

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Instead, persons with mental retardation are generally identified through tests of intelligence and social capabilities administered by specially trained professionals. When the intellectual capabilities of a large, randomly selected group of persons are measured by such tests, the result is what statisticians call a "normal distribution," often described as a "bell curve." At one end of the distribution lie geniuses, and on the other end are profoundly impaired persons; bright, average, and dull folks make up the vast majority in the middle. Intelligence testing produces a numerical result—an "intelligence quotient" or IQ score—that allows psychologists to place an individual along the spectrum of cognitive ability. Other, lesser-known tests enable psychologists and mental retardation specialists to rank individuals in terms of "adaptive" capabilities—such as communication abilities, work skills, and caring for oneself—for which the population as a whole is also continuously distributed.

IQ scores are set up so that the "mean" or average score is 100, and the "standard deviation" is 15. Approximately 95 percent of a normally distributed population lies within two standard deviations of the mean, and individuals lying outside this arbitrary statistical boundary are often deemed "abnormal." A cut-off IQ score of 70—two standard deviations below the mean score of 100—has been set as the intelligence level that separates persons with mental retardation from persons whom mental health professionals designate as having "borderline intellectual functioning." Yet such numerical definitions of mental retardation, with all the apparent precision of a mathematical formula, belie the inherent subjectivity and complexity of the problem.

Life or death decisions

When conscientious mental health professionals interpret IQ scores and plan treatment interventions, they keep in mind that someone who scores 69 on an IQ test is practically indistinguishable from someone who scores 71, and that two persons with IQ scores of 67 and 73 have much more in common with each other than with a person who scores 88. If existing state statutes are any guide, however, legislatures and courts may lose sight of these facts when they put *Atkins* into prac-

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tice. Of the 18 state statutes in effect when *Atkins* was decided, 11 made specific IQ scores part of the criteria for exempting a defendant from the death penalty. In other words, some statutes that implement *Atkins*-type barriers against execution are written such that a one-point change in a person's IQ score could make a life-or-death difference.

The availability of IQ test scores suggests that mental health professionals can offer courts objective, precise methods for deciding who is so impaired that the death penalty should be ruled out. Yet in truth the numbers that IQ tests generate are far from perfectly reliable measurements of a person's cognitive ability. Under the best conditions, IQ tests have a "measurement error" of about five points. An individual who scores, say, 68 on one administration has a 95 percent chance of scoring between 63 and 73 on subsequent administrations. More than half of the persons whose IQ results fall in the mildly retarded range receive scores of 65 to 70—that is, their scores' margin of error will include 70.

Additional uncertainty arises because, for many items, the test administrator has to decide how many points a subject's response deserves. In normal clinical use, these ambiguities do not matter a great deal. But in testing a defendant for whom a one- or two-point change in IQ score has life-and-death implications, clinicians may have a hard time being objective in interpreting a response. The net result of all these imperfections is that judges or juries will often find it difficult to decide which side of the arbitrary line—between mentally retarded and merely "dull"—a defendant falls.

Compounding these problems is the fact that *Atkins* leaves state legislatures considerable room to make mischief. Although the *Atkins* majority found that persons with mental retardation are "by definition" less culpable, the opinion also specifically leaves the task of codifying criteria for mental retardation to the state legislatures. In many states with pre-*Atkins* statutes, specific IQ scores either are required for a diagnosis of mental retardation or constitute presumptive evidence for or against that diagnosis; such laws give results of a single administration of an intelligence test far more weight than mental health professionals believe is warranted. In most cases, statutes use a score of 70 as the cut-off point, but sometimes

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other scores—65 or 75, for example—are used for key decisions. Nothing in *Atkins* requires states to follow the diagnostic criteria used by mental health professionals. States could presumably adopt differing IQ scores and introduce procedural variations when they draft statutes implementing the *Atkins* decision, even though this would let some states execute persons whom the laws of other states would exempt from the death penalty.

Categorizing the mentally retarded

The APA's support of the *Atkins* decision is all the more remarkable in view of organized psychiatry's longstanding opposition to using diagnostic categories for legal and social purposes. In a 1996 friend-of-the-court brief filed in *Kansas v. Hendricks*—a Supreme Court case concerning post-prison confinement of sex offenders—the APA explained why legal decisions should not be determined by categories derived from a medical diagnostic scheme.

> The classification schemes are developed and periodically altered, through comprehensive field trials, research, and analysis, to serve diagnostic and statistical functions, forming a common (and always imperfect) language for gathering clinical data and for communication among mental health professionals.... Such comprehensive classification schemes are not ... designed to identify those [persons who are] subject to various legal standards.... Not all individuals who come within a [diagnostic] category suffer an impairment that diminishes their autonomy.

In recent decades, each edition of the APA's diagnostic manual has included a "Cautionary Statement" stating that its purpose

> is to provide clear descriptions of diagnostic categories in order to enable clinicians and investigators to diagnose, communicate about, study, and treat people with various mental disorders.... The clinical and scientific considerations involved in categorization of these conditions as mental disorders may not be wholly relevant to legal judgments, for example, that take into account such issues as individual responsibility.

The APA's diagnostic manuals also have emphasized the limitations of the diagnostic schemes they exemplify. The manu-

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als have aimed not to categorize *people*, but to categorize their mental disorders. Therefore, it is incorrect to conclude that all individuals who are diagnosed with a particular disorder "are alike in all important ways," the manual explains. "Individuals sharing a diagnosis are likely to be heterogeneous even in regard to the defining features of the[ir] diagnosis and ... boundary cases will be difficult to diagnose in any but a probabilistic fashion." Noting that the "imperfect fit" between legal and medical categories poses "risks" and "dangers" of misusing diagnoses, the current manual warns (as did its predecessor) that, when deciding whether a person meets a particular legal standard of responsibility, "additional information is usually required beyond that contained" in the diagnostic manual's description of a mental disorder. In other words, until *Atkins*, the APA consistently opposed equating moral and legal status with psychiatric diagnosis.

Since its enactment in July 1990, the APA has vigorously endorsed the Americans With Disabilities Act (ADA), which provides broad protections against discrimination based on mental or physical disabilities. The APA's position is consistent with its longstanding wish to reduce the stigma associated with having a mental disorder. In a 1997 position statement, the APA criticized the use of psychiatric diagnoses in making decisions regarding employment, insurance, housing, or credit, because such thinking often reflects widespread but baseless beliefs about mental conditions. Indeed, said the APA:

> categorical distinctions based on mental disorder are tantamount to class discrimination because they assume that everyone who has received a particular diagnosis or treatment is identical. In fact, individuals with the same diagnosis ... may manifest different kinds of symptoms; even when the symptoms are the same, they may vary widely in their severity. Nor is there a direct or simple connection between symptoms severity and impairments that may be relevant to a particular decision.

In many contexts, making blanket decisions about individuals on the basis of a mental disability—for example, denying them jobs, accommodations, or public services out of a belief that their disability makes them less responsible—has become illegal since the passage of the ADA. Yet the Supreme Court majority in the *Atkins* case makes exactly this kind of "cat-

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egorical distinction," stating explicitly that *all* persons diagnosed with mental retardation necessarily lack the capacity to accept full moral responsibility for their actions. Justice Scalia made this very point in his dissent: "The Court concludes that no one who is even slightly mentally retarded can have sufficient moral responsibility to be subjected to capital punishment for any crime. As a sociological and moral conclusion that is implausible."

An approach more consistent with that mandated by the ADA and (usually) advocated by mental health professionals would be to allow an individualized decision about each defendant, one that would take into account his mental condition but not allow it to determine his moral capacity. This was what the Supreme Court's *Penry* decision recommended, and what the jurors who condemned Atkins did. After jurors heard ample testimony about his mental retardation, they concluded, as Justice Scalia put it, that Atkins' condition "was not a compelling reason to exempt him from the death penalty in light of the brutality of his crime and his long demonstrated propensity for violence."

A can of worms

Scalia's *Atkins* dissent asserts that exempting mentally retarded persons from the death penalty will turn "the process of capital trial into a game," and that a simple reading of the official AAMR and APA definitions of mental retardation shows that "this condition can readily be feigned." In fact, mental retardation is hard to fake successfully. The diagnostic criteria require evidence that retardation began during childhood—evidence, that is, that the condition existed years before the defendant committed a capital crime. On occasion, information about the defendant's childhood academic performance and social functioning may be sparse or ambiguous, and in these cases, the defendant's current behavior (feigned or genuine) may influence what mental health experts conclude about his life-long capacities. But a possibility of spurious claims is not a reason for barring all legal claims of a certain sort, assuming that the reason for allowing such claims is sound in the first place. Presumably, courts can deal with false claims of mental retardation as well as they deal with false claims of medical and psychological

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problems that arise in a variety of other legal circumstances.

What *Atkins* will likely inspire, however, are efforts to create categorical death penalty exemptions for defendants with *other* serious mental limitations. Indeed, prominent psychiatrists began to argue for new exemptions shortly after *Atkins* was announced. Diane H. Schetky, the principal author of the APA's position statement opposing death sentences for persons who commit crimes as juveniles, believes that "our current knowledge of neurological and psychological developments in adolescents" means that the Supreme Court's arguments for sparing retarded persons from the death penalty "can and should be applied to individuals who commit their crimes as juveniles." Noting that many forensic psychiatrists favor total abolition of the death penalty, former APA president Alan A. Stone believes that if executing the mentally retarded is unconstitutional, "it is certainly reasonable for the abolitionists to argue that it is equally unconstitutional to execute the mentally ill." Mental illness and mental retardation have similar causes, says Stone, and "the mentally ill suffer from many of the same limitations" that (in the Supreme Court's view) diminish the blameworthiness of retarded persons. "I believe the time will come when we recognize that it is equally indecent to execute the mentally ill."

Obvious candidates for mental illness exemptions would be defendants who acquire, after childhood, the types of intellectual and functional deficits that persons with mental retardation display throughout their lives. Because of their adulthood onset, psychiatrists call such conditions "cognitive disorders" or "personality changes caused by medical conditions," rather than mental retardation. Examples include the mental deterioration that can follow drug abuse, head injuries, infections, and Alzheimer's disease. If a psychiatric definition can lead courts to regard mentally retarded defendants as not fully accountable for their acts, then consistency requires courts to exempt brain-damaged defendants from execution as well.

It probably is rare for jurors to mete out death sentences to defendants who are known to have dementias or demonstrable brain damage, so rules sparing such individuals might have little practical impact on capital punishment decisions. But in recent decades, psychiatrists have recognized that death

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row inmates often have other mental conditions that are associated with impaired cognition and reasoning. A prime example is schizophrenia. A 1990 study found that one-fifth of homicide defendants may have this disorder, and some published reports suggest rates of at least 5 percent for death row inmates. With the nation's death row population currently standing at around 3,700, this means that 200 or more condemned U.S. prisoners may have schizophrenia.

If the statistically defined limitations known as mental retardation are a barrier to the death penalty, then perhaps a biologically based disorder like schizophrenia should be as well. Lawyers for Jay D. Scott, an Ohio death row inmate, argued this very point in 2001, while Atkins' case was heading to the U.S. Supreme Court. An Ohio Supreme Court majority rejected this claim, and Scott was ultimately executed. But the defense's argument persuaded one dissenting judge, who protested:

> I cannot get past one simple irrefutable fact: [Scott] has chronic, undifferentiated schizophrenia, a severe mental illness.... As a society, we have always treated those with mental illness differently from those without. In the interest of human dignity, we must continue to do so.... Executing [Scott] will be another assertion that taking the life of a person with mental illness is no different than taking the life of someone without mental illness.

This reasoning, which insists on a categorical exemption for mental illness, fits well with the majority's position in *Atkins*.

Another psychiatric condition that is a potential candidate for exemption is attention-deficit/hyperactivity disorder (ADHD). Although this condition has been the subject of much public controversy, most psychiatrists regard ADHD as a real disorder that can severely disrupt functioning in children, and that often persists into adulthood. According to the APA's diagnostic manual, ADHD interferes "with developmentally appropriate social, academic, or occupational functioning" and may lead "to engagement in potentially dangerous activities without consideration of possible consequences." Such problems lie behind much criminal behavior, and not surprisingly, the incidence of ADHD is elevated in adult prison populations. As with schizophrenia, brain-imaging studies of individuals with ADHD point to a biological basis for these problems.

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Persons with low levels of the neurotransmitter serotonin are another logical group for exemption. Scientists have accumulated robust evidence linking low serotonin activity to impulsive behavior, alcohol abuse, and violence. Many individuals naturally have low serotonin activity, and such persons often are depressed, less responsive to external social controls, and especially prone to satisfying appetites for food, sex, and drugs without regard for the consequences.

Brain damage, schizophrenia, ADHD, and low brain serotonin are just a few of the psychiatric conditions that—as the majority opinion in *Atkins* puts it—diminish a person's "capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others." By declaring the execution of persons with one particular psychiatric diagnosis "cruel and unusual punishment," *Atkins* has opened a psychiatric can of worms. Courts will have no choice but to consider whether other equally disabling mental conditions also deserve placement in a special legal and moral category.

The misuse and abuse of psychiatry

Given the high rate of serious mental illness among homicide defendants, granting psychiatric exemptions could eventually leave very few individuals eligible for the death penalty. To death penalty opponents, such a development might seem desirable. Some may be tempted to use psychiatry to eradicate the death penalty in practice. Yet whatever we may think of the morality of the death penalty, we should recognize that this strategy represents a misuse of psychiatry—one that would harm the profession as well as the legal system. The *Atkins* decision endorses the use of psychiatric categories to single out groups of citizens for distinctive legal treatment. It fails to recognize that psychiatric diagnoses are created for clinical purposes (chiefly, to guide treatment) and are periodically redefined as treatments and scientific findings reveal the errors of older categorizations. *Atkins* treats psychiatric diagnoses as fixed categories and gives them tremendous legal and social import.

Over the last several years, the U.S. Supreme Court has

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handed down a series of procedural and substantive requirements that give mental health professionals a considerable role in the capital punishment process. The Court has hoped that the testimony of mental health professionals would make capital sentencing fairer and more accurate. But while psychiatrists and psychologists have an important role to play in legal proceeedings, letting a psychiatric diagnosis determine a defendant's sentence will not resolve the grave flaws in our nation's administration of the death penalty. Giving psychiatric diagnosis such a decisive role in capital sentencing may even compound problems with the administration of the death penalty by transforming what should be an act of moral judgment into a medical conference about a defendant's clinical disorder. Perhaps the most significant flaw in the *Atkins* decision is that it perpetuates the myth that "getting psychiatric help" will make the death penalty fairer and more palatable.

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The public's stake

LEON R. KASS

FOR the first six months of this year, the President's Council on Bioethics met to consider the moral, biomedical, and human significance of human cloning in order to advise President Bush on the subject. The council's report, *Human Cloning and Human Dignity: An Ethical Inquiry*, was issued in July, and a paperback edition has just been published by Public Affairs.†

Among the charges to the President's Council on Bioethics were the following: to provide a forum for the national discussion of bioethical issues and to facilitate a greater understanding of these issues. Our report, in addition to providing policy recommendations, was intended to serve both of these purposes.

The commercial publication of this volume and the convening of this book forum are intended to help us to perform our mission. I am very grateful to Paul Golob of Public Affairs, to Chris DeMuth of the American Enterprise Institute, and to my fellow panelists for helping us in this work.

I want to summarize the content of the report in five points: First, the council sought to examine the subject of human cloning in full by considering the human goods that cloning might serve or endanger—not just whether the technique is feasible or safe. We sought also to assess the impact of growing biotechnical powers over human life and their effect on human procreation, on the goals and limits of biomedical science, and on the meaning of the activity of healing. It was of primary importance to put cloning in its proper place, both humanly speaking and also in the context of other

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biotechnical powers now gathering for manipulating the human body and mind.

Second, the council strived to formulate fair and accurate terminology. Human cloning is a subject that has been bedeviled by confusing and manipulative speech. Our goal was to clarify the terminology, beginning with the idea of human cloning itself. Whatever the purpose for which human cloning is undertaken, the act that produces the genetic replica is the creation of an embryonic clone. Accordingly, the council has insisted that what we mean by human cloning is the production of cloned human embryos, the earliest stage of developing human life. This act of cloning may be undertaken with the intention of either transferring these embryos to a uterus to initiate a pregnancy or taking them apart in order to obtain stem cells for research.

In popular discussion, the first use has been called "reproductive cloning" or just "cloning." The second has come to be called "therapeutic cloning," "research cloning," or "nuclear transfer for stem cell research." The council, instead, chose to call these uses respectively "cloning-to-produce-children" and "cloning-for-biomedical-research." These terms are accurate. And they allow us to debate the moral questions without euphemistic distortion or Orwellian speech. Whether one favors or opposes cloning-to-produce-children, whether one favors or opposes cloning-for-biomedical-research, the council insists that we must acknowledge that both uses of cloning begin with the same act, the production of cloned human embryos.

THE third point taken up by the council was the ethics of cloning-to-produce-children. Regarding cloning-to-produce-children, the council is in agreement with majority opinion both in America and the Congress. The council was unanimous, in fact, that cloning-to-produce-children should be opposed, both morally and legally. Not only is the technique demonstrably unsafe, but it can never be safely attempted. And the council opposes this practice not only because it is unsafe, but because it would imperil the freedom and dignity of the cloned child, the cloning parents, and the entire society. In its report, the council also argues that by enabling parents for the first time to predetermine the entire genetic makeup of their children, we would be taking a major step toward turning procreation into manufacturing. Cloning-to-produce-children would also confound family relations and personal identity, create new stresses between parents and off-

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spring, and might open the door to a new eugenics where parents or society could replicate the genomes of individuals whom they deem to be superior.

The fourth area taken up by the council was the ethics of cloning-for-biomedical-research. And here the council, like the nation, was divided. On the one hand, we acknowledge that the research offers the prospect, though speculative at the moment, of gaining valuable knowledge and treatments for many diseases. On the other hand, this practice would require the exploitation and destruction of nascent human life created solely for the purpose of research.

Individual council members weighed these moral concerns differently. Yet all members of the council—and I am delighted about this—agreed that each side in this debate had something vital to defend, not only for itself but for all of us. Each side understood that we cannot afford to be casual about human suffering, to be cavalier regarding how we treat nascent human life, or to be indifferent about how we decide amongst the alternatives. Each side recognized that we must face up to the moral burden of either approving or disapproving this research, namely, on the one hand, that some who might be healed more rapidly might not be; and on the other hand, that we will become a society that creates and uses some human lives in the service of others.

FINALLY, the council offered two policy recommendations, each of them distinct from the most prominent legislative proposals considered in Congress. Both recommendations called for a permanent ban on cloning-to-produce-children, thus giving public force to the nation's strong ethical verdict against this practice. Where the council differed was on how to approach cloning-for-biomedical-research.

A minority of the council recommended that we proceed now with such potentially crucial research, but only with significant regulations in place, including federal licensing, oversight, and strict limits on how long cloned embryos may be allowed to develop. A majority of the council, myself included, recommended that no human cloning of any kind be permitted at this time. We proposed that Congress enact a ban on all attempts at cloning-to-produce-children and a four-year federal moratorium on cloning-for-biomedical-research, beginning with the act of the production of cloned human embryos.

We argued for this moratorium on a number of grounds. It would provide more time to debate whether we should cross

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this crucial moral boundary—that of creating human life solely as a resource for research. A moratorium would allow time for other areas of stem cell research, both adult and embryonic, to proceed. It would allow time for those who believe that cloning-for-biomedical-research can never ethically be pursued to make their case, and for those who disagree to design a responsible system of regulation and public oversight.

A national moratorium would also allow the debate on the question of research on cloned embryos to be taken up in the larger context, where it belongs, the context of embryo research generally, and of the future possibilities of genetic engineering of human life. Pending such debate, the majority of the council held that no law should now be enacted that approves or authorizes *any* human cloning.

With the Senate, now in recess, having failed to act on the cloning legislation, we find these questions still before us and likely to return for legislative consideration. Yet, even as we speak, Italian embryologist Severino Antinori claims that a clonal pregnancy is in the works and that the first cloned child may be born soon.

I think it behooves us as human beings and citizens to step forward and urge our legislative representatives to act when they next convene, and to continue to think about the deepest human and social implications of the biotechnology revolution now underway.

Slavery plus abortion

DIANA SCHAUB

ON the cover of *Human Cloning and Human Dignity: The Report of the President's Council on Bioethics* is the image of a fingerprint. It's an inspired choice, for the fingerprint, as Leon Kass's "Foreword" says, "has rich biological and moral significance." The fingerprint is at once emblematic of our common humanity and our individual uniqueness. No two are alike; even identical twins have distinct fingerprints. Presumably a cloned human being also, as a sort of delayed-entry twin, would not be a perfect repeat, at least not all the way down to the tips of her fingers. DNA is not the whole of our nature. It is, however, a good deal of it, and the question raised by recent scientific developments is whether and how

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much we ought to stick our fingers in it. Ought we to put our own impress upon the means by which human beings come to be? As Kass points out, fingerprints are the marks left by our grasp on things—a grasp that is sometimes illicit. This is why the police know as much about fingerprints as scientists do. And it is why the decisions to be made about cloning are properly political decisions. It belongs to citizens and legislators to police the bounds of the human grasp, to determine what may be manipulated, manhandled, and doctored, and in what ways. While the liberty of the mind is by right absolute, actions may, with justification, be restricted or forbidden.

Let me suggest another metaphoric image that came to mind while reading the report: not the fingerprint but the navel and especially the exercise referred to as "contemplating your navel." Now before anyone mistakes this for a criticism, uncivilly expressed, let me hasten to say that I am using the expression rather unidiomatically. "Contemplating your navel" usually means to relax and withdraw from the world, to zone out, waste time, and daydream. I don't mean that. I mean that the council has meditated on the human core and that it has deepened our self-understanding by reflecting on matters often overlooked. In *Brave New World*, the inhabitants of the World State are "hatched" and "decanted" rather than born; I surmise that Huxley's Betas, Deltas, and Epsilons, manufactured in uniform batches by "Bokanovsky's process," are entirely without bellybuttons. So, while we still have them, we might do well to contemplate them.

IN effect, that is what the council's report does. It explores the meaning of procreation and the human significance of sexual reproduction. It articulates the links between sexual reproduction and the ground and purpose of the human family, the continuity of the generations, the formation of individual identity, and the bearing of our freedom and our mortality. The report enables us to understand all that is at stake in the advent of asexual reproduction. Cloning is a form of generation that would confound the generations—a woman who had herself cloned would be both mother and identical twin sister to her clone. She would in effect have become the mother of herself. To aim to be the mother of oneself is the height of hubris and despotism. It is the crime of incest—the begetting of one's own upon one's own—scientifically perfected. The cloning of human beings would be the triumph of

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the Machiavellian project to conquer fortune and bring everything within the power of human choice and calculation.

BY raising serious doubts about that modern project, *Human Cloning and Human Dignity* offers a vindication of the element of chance in human life. It shows how human dignity is bound up with the lottery of nature and how the ground of human dignity could be imperiled by the attempt to extend human control over the human essence. The counsel of wisdom and prudence is to stick with our old-fashioned, erotic, and happy-go-lucky mode of generation rather than embracing the new science of solitary self-genesis. We should remain true to the bellybutton—the bellybutton that reminds us of our indebtedness to our origins, but that also bespeaks our directedness toward a self-standing existence.

In its combination of profound reflection on human nature with immediate policy concerns and decisions, the council's report is reminiscent of *The Federalist Papers*, a work which Jefferson—himself no Federalist—judged to be "the best commentary on the principles of government, which ever was written." I predict a similar authoritative status for this publication in the sphere of bioethics. In a sense, the council's report is even more remarkable than *The Federalist Papers*, inasmuch as *The Federalist Papers* had a partisan, and even propagandistic, purpose. Imagine if we instead had a document called *The Constitution Papers*, a joint product of Federalists and Anti-Federalists, laying out for the citizenry the full panoply of argument and counter-argument. That is what this report is like. Even when it gives expression to the council's unanimous opposition to cloning-to-produce-children, it details the arguments that might be mustered in support of such cloning. More especially when the topic is cloning-for-biomedical-research, where the council was itself split, the report, with a united voice, carefully delineates both the majority and minority views, and seeks to bring them into conversation with one another. This dialectical approach is so rare one hardly knows how to respond.

Certainly, one comes away with new respect for the potential of reasoned discourse within a democracy. Moreover, I at least came away with the conviction that if one were, with an open mind, to read the whole of the book, including the appendix of personal statements, one would be persuaded of the rightness of banning all human cloning, whether for the purpose of children or research. In the

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pageant of arguments, some of them looked distinctly thin and weak. And yet, dampening one's hope that truth will emerge the winner is the fact that the participants themselves, despite their respectful listening to one another, did not achieve agreement. Well, they did and they didn't. On the question of cloning-to-produce-children, there was welcome unanimity. However, on the question of cloning-for-biomedical-research, there was a deadlock, with seven members for permitting it, seven for banning it, and three in the middle in favor of a moratorium. For the rest of my time, I would like to talk about the meaning of that deadlock and what it portends for the future.

IN the end, the seven in favor of a permanent ban were willing to join with the three in favor of a temporary ban in order to produce a majority recommending a moratorium. From what we have seen so far in Congress, the deadlock is being repeated there, though with less prospect of a policy compromise emerging. Indeed, the deadlock over cloning-for-biomedical-research may make any sort of legislative action unlikely, even a ban on cloning-to-produce-children (despite the near universal opposition to such cloning). The division over cloning-for-biomedical-research is a division not so much over cloning as over the status of the human embryo, cloned or not. Until that larger issue—with its implications for embryo research in general, as well as for the current practice of in vitro fertilization, and of course for abortion—is resolved, we risk ending up with a laissez-faire policy on cloning that very few Americans want.

I did find it tremendously heartening that the split within the council was not between scientists and humanists. For instance, four of the six M.D.s voted for the moratorium on research cloning, and in some cases clearly favored strengthening that to a ban. It seemed, indeed, that those who knew most about embryology spoke most persuasively about the unsustainability of the claim that 14-day-old and younger embryos might be treated with less than full human respect—because less than fully human. Stanford University biologist William Hurlbut, for instance, both in his detailed responses on the subjects of gastrulation and twinning, and in his general explanation of potentiality and organismal unity, showed how the evidence of science supports the claim that the early embryo has an inviolable moral status.

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KASS reminds us in the "Foreword" that "reasonable and morally serious people can differ about fundamental issues," but I take it that this unique experiment in clarifying the differences is undertaken in the hope that such clarification will lead to the concord of truth. In other words, this is not a matter about which we can just agree to disagree. There is an imperative to continue reasoning with one another, which implies, I think, that there is reason with a capital R out there somewhere, and that reasonable people, were they perfectly reasonable, or even just sufficiently reasonable to the occasion, would arrive at it. As Lincoln said of the slavery controversy: "Whenever the issue can be distinctly made, and all extraneous matter thrown out so that men can fairly see the real difference between the parties, this controversy will soon be settled, and it will be done peaceably too."

Now, maybe the cloning controversy is not like the slavery controversy. Certainly, there is no looming prospect of civil war should the division of opinion continue. Kass suggests there is another difference as well. In the "Foreword," he says that

> with slavery or despotism, it is easy to identify evil as evil, and the challenge is rather to figure out how best to combat it. But in the realm of bioethics, the evils we face (if indeed they are evils) are intertwined with the goods we so keenly seek: cures for disease, relief of suffering, and preservation of life. When good and bad are so intermixed, distinguishing between them is often extremely difficult.

In talking of the complexity and difficulty of the bioethical enterprise, Kass was perhaps being diplomatic. This remark could be in the same vein as the "reasonable people can differ" statement, inasmuch as it gives further reason for why they might differ.

Nonetheless, with considerable trepidation, I feel I must take issue with the statement. The trepidation arises because Leon Kass was my teacher at the University of Chicago and because I believe the nation at large is now blessed in having him as a teacher. At the risk both of seeming ungrateful, and of being wrong, I would only point out that it was not at all easy to bring men to see slavery as evil, particularly not once the practice of slavery was well-established in the life of the nation. Moreover, in the controversy over slavery, as Lincoln himself admitted, there were legitimate goods at stake for the slaveholding South, among them security, self-preservation and the preservation of their way of life, states' rights, specific

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constitutional guarantees, and a certain kind of honor. Lincoln's acknowledgement, however, of the weightiness of the South's legitimate concerns didn't stop him from declaring slavery an evil and insisting that one cannot attain those real human goods by the route of perpetuating slavery. There is a difference between granting credence to the goods sought by one's opponents and granting credence to their arguments or plans.

We are armed now with this invaluable report, and so the time has come to frame the issue more sharply. Cloning is an evil; and cloning for the purpose of research actually exacerbates the evil by countenancing the willful destruction of nascent human life. Moreover, it proposes doing this on a mass scale, as an institutionalized and routinized undertaking to extract medical benefits for those who have greater power. It is slavery plus abortion.

Of my teacher I would ask: Is it either incorrect or misleading or unhelpful to see the dispute over cloning as of a piece with the slavery crisis and the abortion debate? And further, if the example of Lincoln is pertinent, then does talk of moral complexity and the intertwinedness of good and evil and the intractability of the issues make it harder to identify evil as evil and more likely that we will end up in Brave New World, where despotism masquerades as a conception of the good? The motto of the World State with which Huxley's novel opens is "COMMUNITY, IDENTITY, STABILITY." I suspect our own path to biomedical despotism will be guided by the words "PROGRESS, COMPASSION, AND CHOICE."

An opportunity lost

CHARLES MURRAY

IT is customary when making critical remarks to start out by saying nice things about the person one is criticizing, and I want to do that now, but not pro forma. The report of the President's Council on Bioethics is superb. It embodies the kind of reasoned discourse that you wish were used for all public issues and almost never is. Furthermore, Leon Kass was the best possible person to head up this effort. I can think of no one else who brings to this difficult subject such moral seriousness, power of intellect, and generosity of spirit.

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It is then a wonderful document, but also I believe profoundly misguided. Here is how I wish the report had begun: As students of the history of science, we understand that it is not within our power or the power of the United States to have one iota of effect on what is going to happen with human cloning. This technology will develop at its own pace, and to an extent that will be dictated by what can be done, not by what we wish would be done.

We understand the folly of trying to imitate King Canute. But we are also students of the problems of being human and the problems of human institutions. And we see in this arising technology ways in which these institutions are placed at risk, especially that core institution of the family. We see ways in which our understanding of what it means to be human could easily be compromised in ways that would leave us spiritually poorer and bereft of many of the sources of human fulfillment that we now enjoy.

Therefore, our task is not to propose new regulations or laws, for we understand their futility, but to engage in dialogue with those who are doing this research so that we may manage it with as little harm and as much good as possible. That is what I wish the council's report had said.

IT is simply not serious to think that the U.S. government can pronounce on what is going to happen with this technology. It can't. In no past instance has anybody been able to put a lid on scientific inquiry and its progress, and we won't this time, especially because biotechnology is so attractive to so many people.

If in 1939, when we already had the physics for the atom bomb, we didn't yet have a Hitler, it is quite possible that many physicists would have said, "Take this cup from our lips. We don't want to spend the next five years building an atom bomb." Yet biotechnology is different. The scientists in the field do not see themselves as engaged in the work of the devil; they see themselves as bringing incalculable benefits to mankind. They do not see Leon Kass and other members of the President's Council as people who are trying to hold back and ponder at greater lengths extremely difficult moral questions. They see them as troglodytes.

Furthermore, hundreds of billions of dollars are to be made in biotechnology. If you take a group of scientists who think they are doing the Lord's work (even if most of them are not

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religious) and if there are hundreds of billions of dollars to be made, I promise you, it will happen. It may not happen in the United States if we pass certain laws, but it will happen.

In this respect, there are a variety of ways in which the council's report, much as I admire its tone and spirit, represents a missed opportunity. For once we realize that the development of this technology is inevitable, then our approach becomes quite different from the council's. Most importantly, we would take steps to make sure that the United States remains the center of this research, that the top scientists in the world are socialized here, and that the best graduate students come here to learn how to do it. At least then the science would develop within an ethos of moral responsibility. Such will not happen if the center of research is in China, or if it is done under cover in Barbados.

The council's report exacerbates a number of problems. First, it gets in the way of a meaningful dialogue with the scientific community. My impression from conversations with scientists is that the Jesse Helms syndrome has set in, whereby if Helms favors a position, you can be sure that nobody in academia will admit to supporting it. We now have a situation in which the difficult moral issues posed by cloning are raised mainly by conservative Republicans. This is bad. It makes it that much harder to gain the sympathetic attention of the scientists who do the research.

A SECOND problem concerns the portability of this science. I said a few minutes ago that China's laboratories will do the research if we don't. The report largely ignores this issue, noting only that strict laws against certain kinds of work have been passed in Michigan and in Germany, and yet their biogenetic industries seem to be doing just fine. I'm sorry, but that is not good enough.

We are at the very early days of a very big business, and the portability of science has increased enormously. You don't have to be on a Cal Tech campus to consult with people at Cal Tech, nor within the continental limits of the United States to interact with our scientists. The Internet has seen to that. You don't need to be in a university setting in order to have the state-of-the-art laboratories required for bioengineering. All you need is money, and there is going to be lots of money for this kind of work. I am not worried that many scientists would actually leave the United States to engage in this research. What concerns me is that the United States will not be at the

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center of a promising new technology, and that the scientists who do the research will be socialized elsewhere.

To continue this gloomy forecast, let me bring up a few additional topics people just don't want to think about. I have already mentioned China. Biotechnology within a fairly short period of time will open up all sorts of possibilities; some of them are awful. I don't think China is going to blink at any of them. While the use of this technology as a weapon is not nearly as direct as the use of atomic energy as a weapon, we cannot overlook the ways in which that could happen, too.

I imagine that there are a variety of questions that people might reasonably ask me, such as, "Is this man completely indifferent to the question of simply doing the right thing?" No, I am not. I am probably as troubled by this technology as Leon Kass. I may see more promise in the up side, but I certainly am worried by the down side. However, when one is making moral decisions not just for oneself but for large groups of people, a utilitarian calculus must enter in. Moreover, if I am right in arguing that we cannot stop the science from proceeding at least somewhere, then the council's report amounts to an empty moral gesture.

In the course of talking about these things, I have tended to sound more apocalyptic than I really feel about the council's recommendations. A four-year moratorium is in fact very modest. Great damage will not be done to the position of the United States if this narrow recommendation is adopted. My concern is rather for the increased probability of a wide variety of things going wrong in the future.

WE are in the position of scientists in 1939. The science is in place. A moral person can say that human beings should not have this technology. I am willing to grant that if it were within our power to prevent human beings from having this, there would be a good moral case for taking government action. Yet if that cannot be done—and it cannot—one must face the fact that human beings will have this capacity eventually. The question then is: What can we do to minimize the damage and to enhance the benefits?

In closing, let me say that one thing gives me comfort, and it is that on the President's Council are a number of people, Leon Kass included, whose intellect and judgment I respect enormously. That such men and women disagree with me gives me some hope that I am wrong.

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The danger of absolutes

WILLIAM A. GALSTON

DESPITE my disagreement with some of its specific conclusions and recommendations, I have come to praise the report of the President's Council on Bioethics, not to bury it. The report is distinguished by an extraordinary civility of tone, by which I mean not just mutually respectful language among the council members but something more, a model of how scholarly expertise can contribute to democratic deliberation and debate.

The report offers—so far as the son of a biologist who is not himself a biologist can judge—sound science, accessibly and impartially presented, in the service of reflection on policy and morality, the sort of reflection in which citizens and their representatives must engage. The contrast between the council's report and the prevailing tone of our public discourse is painful.

Beyond this civility of tone is something that I will call civility of substance. In this respect, I applaud as true what Diana Schaub condemned as base. In the report, the proponents of the different positions do not argue that all of the relevant reasons, principles, and human goods are on their side. To say, as they do, that the balance or preponderance of goods point in one direction, rather than another, is to give moral substance to the view that others of good will and intelligence can legitimately arrive at different conclusions. Indeed—and I think this is a very important insight—the overall thrust of the report is that vitally important goods and principles are not only at stake in the cloning debate but are also at odds with one another. The choice is not so much between good and evil as between good and good. As the report insists, "Each side in the debate has something vital to defend, not only for itself but for everyone."

Yet another reason that I admire the council's report is for the breadth of the moral reflection in which it engages. Its inquiry is not conducted in the spirit of cost-benefit utilitarianism or fashionable rights talk. Instead, it emphasizes broad and deep reflection on what is good for human beings, not only as individuals but as social beings imbedded in a network of familial, social, and political relations. Furthermore, this report offers not just the well-worn, though important and, indeed, unavoidable debate about the status of the human

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embryo, but also innovative lines of inquiry into the nature of good lives and of good societies.

THE council's report should also be praised for being quietly but boldly counter-cultural. What do I mean by that? The report dares to suggest that our characteristic American predilections and strengths—our orientation toward life and freedom, innovation and compassion, and faith and progress—which have brought us such blessings, can also be the source of moral blindness and even hubris. It dares to suggest that on occasion there are things more important than life—namely, in the old Aristotelian term for these things, the good life. And it suggests that in the case of the clash between lives and good lives, it's not always clear which way to go. Even more counter-culturally, the report dares to suggest that there are things even more important than the relief of suffering. This is an amazingly bold proposition.

To give you some idea of its daring, I quote from three widely separated portions of the report. From the beginning: "Easing suffering is not our only moral obligation." From the middle: "Suffering should not be opposed by any means possible." And, toward the end, the report candidly states that if a moratorium on cloning for biomedical research is enacted, "It is possible that some might suffer in the future because research proceeded more slowly. We cannot suppose that the moral life comes without cost."

Another thing I admire about the council's report is its scrambling of conventional ideological categories. For example, I note with interest that two of the best-known conservatives on the council, Charles Krauthammer and James Q. Wilson, disagree with many other conservatives (while agreeing with one another) in denying the human embryo the status of full personhood. They nonetheless manage to disagree with one another concerning the most contested policy issue before the council, namely cloning-for-biomedical-research. I cannot imagine a more instructive lesson in what I will approvingly call anti-dogmatism.

Let me also note a very important feature of the language of this report—that it is moral but not theological. For while various members of the council are well known for their religious views, and while the council as a body insists that religion has a valid and important role to play in the public square, the report is remarkable for what appears to be its deliberate effort to find a public language accessible to indi-

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viduals of differing faiths or of no faith at all. There is no reference to specific doctrinal or theological positions and, perhaps with a single exception, no mention of God.

HAVING praised the report in due measure, I turn now to the second part of my remarks, which consists of four mild criticisms and a concluding partisan jab. My first mild criticism is that in the report's moral language I find two discernibly different and conflicting moral traditions represented.

One, which can be traced back to Aristotle, imagines a moral universe in which there is a multiplicity of human and social goods, and argues for balance and prudential deliberation to establish what is most important and needful with regard to particular issues and situations. The second tradition, which can be traced to Kant, focuses on human dignity and respect and yields moral principles that are true, or held to be true, categorically, without exception. Frequently, these principles consist in absolute prohibitions of certain kinds of conduct, whatever the consequences of adhering to the prohibition may be. But are these two moral traditions compatible? Do they lead to the same kind of moral analysis or to the same conclusions? And what happens when they don't?

To bring this analysis down to earth, let me offer an example. In a remarkable passage of the report, the council, which unanimously opposed what is commonly known as reproductive cloning, states, "We are willing to grant that there may be exceptional cases in which cloning-to-produce-children is morally defensible." The council then states, "Such cases do not justify the harmful experiments and social problems that might be entailed by engaging in human cloning. Hard cases make bad law."

It is easy to defend a legislative ban on cloning on the basis of an absolute moral prohibition, assuming one exists. It becomes harder, however, to defend an absolute legislative ban when the underlying morality, though inclining strongly in one direction, is less than absolute. The council wants to combine an Aristotelian stance toward prudential judgments with a Kantian stance on blanket prohibitions. It is not clear that the two can be brought together coherently.

The council's report asks whether discovering new cures for the sick is "a moral imperative that should trump all other goods and values." That's a good question. Along with the authors, I believe that the answer is no. But I must then ask, is there *any* moral imperative that should trump all other

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goods and values in all circumstances? My answer to that wider qustion is also no. Would the council's majority agree with me?

SECOND mild criticism: I must note one point on which I disagree with the entire council. The report asserts at one point that if society accepts, that is, fails to prohibit, a practice, then society may be said not only to endorse but to engage in that practice. I think that that is just plain wrong. In a liberal democratic polity with a limited government marked by multiple sources of legitimate authority, public law will of necessity permit many individual, associational, and religious practices that it cannot be said to endorse, let alone to participate in. To think otherwise is implicitly to affirm a conception of public authority as all responsible and all powerful. I cannot imagine that the council really means to say that.

Now for the third mild criticism. The report distinguishes between two understandings of parents' relations to their children: that of children as gifts and blessings who we learn to accept as gratefully as we can; and that of children as products of our wills whom we try to shape in accordance with our desires. The council's report unequivocally endorses the first understanding.

I don't think it's so simple. Much of parenting is a matter of striking a difficult balance between shaping, on the one hand, and accepting, on the other. I don't think we are morally obliged to refrain from, let us say, prenatal genetic therapy to remedy defects in fetuses, which medical science now enables us to do. We do not have to learn gratefully to accept those defects if we can do something morally permissible to remedy them. I think the council, in its understandable desire to chasten our tendency toward scientific hubris, leans too far in the direction of a kind of principled passivity that contradicts its quest for moral balance.

Fourth, let me offer some reflections on the role of moral sentiments. Taking their bearings from James Q. Wilson, the council members who favor regulated cloning for the purpose of biomedical research argue that our moral sentiments point toward a distinction between young embryos and infants. This distinction is expressed, for example, in the different levels, kinds, and durations of our mourning when catastrophe befalls one or the other.

Wilson asks rhetorically, "Do we assign the same moral blame to harvesting organs from a newborn infant and from a

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seven-day-old blastocyst?" A majority of the American people clearly would not. The question then becomes, what is the moral force of our instinctive or natural responses to morally latent phenomena? The council's majority argues that we must shape, or in this case reshape, our emotional responses in light of our moral obligations as revealed by reason. That is true, as far as it goes. But we must go on to investigate the role that moral sentiments ought to play in defining the content of our rational obligations. This is a question on which the chairman of the council, who has written a famous article entitled "The Wisdom of Repugnance," is especially well qualified to shed some additional light.

Finally, the partisan jab. The council's majority declares, "How we respond to the weakest among us, to those who are nowhere near the zenith of human flourishing, says much about our willingness to envision the boundaries of humanity expansively and inclusively. It challenges the depth of our commitment to equality." Hubert Humphrey couldn't have put it better. This proposition, which the council puts forward as a truth not confined to the question of cloning, leads in the direction of a robust social policy oriented toward the most vulnerable in our society. I'm not confident that the conservative readers of this report, who will tend to applaud the thrust of its majority conclusions on the matter at hand, will be willing to accept the broader implications of its animating principles.

The horror

J. BOTTUM

THERE are three directions in which we might take a discussion of the report of the President's Council on Bioethics. We might first talk about the issue of cloning itself. Then again, we might turn to the deliberations of the President's Council, as presented in this book, and talk about the divisions and insights of the council's members. Finally, we might take this discussion to be about politics—which is to say, the impact and the importance, in the real world, of the policy recommendations made by the President's Council. About all three of these, I have enormous amounts to say—more than could ever be fit into the time we have. But here are a few first thoughts.

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Among the finest features of the report is the perfect civility of its thoughtful deliberations. And yet, that civility comes at a cost, which I am not sure we have fully reckoned. While I applaud nearly all of its work, the council's report does not, for example, sufficiently express the horror and repugnance that the idea of cloning arouses in me.

Perhaps an analogy will help make that feeling clear. I once tried to write a poem about an attractive young woman I had seen walking along the street. I suppose she was not beautiful, per se, but then I have reached the age at which youth itself begins to seem beautiful. Those of you who are still young may not understand what I am talking about. But for those of us growing old, there is a lure in youthfulness—the tautness of it, the glow.

And there is also a crime: to act upon that lure, to seek one's own youth restored by leeching on the youthfulness of others. This is the mockable widower seeking a young bride in Molière's comedies; it is the sexual sickness expressed by Charles Dickens in *Nicholas Nickleby* when the aged Arthur Gride drools over the young Madeleine after using her father's debts to force her into his power.

BUT I have in mind something more than putting an armful of warm girl in an old man's cold bed. Behind this stands the fantasy of age, that would sacrifice the young to buy its way back from the aches and diseases that age is prone to. There is, for instance, the old witch who wants to fatten up Hansel and Gretel before she bakes them in her oven and devours their youth. And then there is Elizabeth Bathory—the seventeenth-century Hungarian countess and perhaps the most famous figure to come out of Transylvania since Vlad the Impaler. Her trial records estimate that she slaughtered 600 young virgins in a decade, in order to bathe in their youth-restoring blood.

Let me bring this analogy home. It seems to me that the proponents of much of the biotech revolution—the supporters and enablers of the Brave New World of eugenic biotechnology—are forced into the uncomfortable position of insisting that the Countess Bathory was absolutely right, at least about her goals. She merely chose the wrong means.

I mean that not quite in the provocative sense in which I phrased it. She was obviously wrong about the effects of virgins' blood, and she lacked the help of Advanced Cell Technology's laboratories in Massachusetts. But she also chose the wrong means when she used living, conscious human be-

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ings. The proponents of cloning-for-biomedical-research insist that the objects upon which modern laboratories work are not living human beings but cells—or biological accidents, or bits of human beings—which, because of ancient prejudices, must be spoken of in reverential ways, but which need not be treated any differently than a fingernail clipping or, in that great euphemism of abortionists, "the product of conception."

But I want to think about this in terms of human motivation. Indeed, when the President's Council distinguishes "cloning-for-biomedical-research" from "cloning-to-produce-children," it invites us to notice that the primary distinction between them is, in fact, a matter of human motivation—namely, the purpose for which the biotechnologist created the clone.

MUCH has been made, by Francis Fukuyama and others, about the recent efforts of scientists to complete the Baconian project—the great vision of Francis Bacon that science will finally ameliorate the human condition, so that we will all be happy, diseaseless, and nigh on immortal. I think it is right to notice this impending fulfillment of the promise that Bacon made centuries ago. But there is something else to notice as well—namely, that Bacon required for his dream that we dismiss all notion of purpose and goal for the objects of science. Indeed, Bacon's *New Organon* is filled with attacks upon the Aristotelian idea of final causation, a natural purpose or aim for things.

But goals don't actually go away just because we want them to. In the space opened up by the dismissal of final cause from science, there entered the malleability of things to the human will. *We* give things their purpose; *we* give them their final cause. The human act is conceived to be the only thing in the universe that has motive, purpose, goal, or aim—and those motives will eventually eat up the reality of everything else.

In fact, they have already eaten up reality. There are serious political questions that might be raised about the council's report. But think about this: The council was unanimous in wanting to prohibit forever cloning-to-produce-children, and could only by the barest majority reach the compromise of a temporary moratorium on cloning-for-biomedical-research. This seems to me exactly backwards. However much cloning-to-produce-children proceeds along defective means, it still aims at the natural cause of procreation. It wants to make babies.

Cloning-for-biomedical-research, on the other hand, has abandoned the goal. Embryos, fetuses, blastocysts, activated eggs,

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products of SCNT, whatever euphemism is floating around this week—cloning-for-biomedical-research takes those objects and makes them plastic playthings for the human will. What is worse, it is the human will traveling down a line of motivation that is inherently suspect—if we remember Molière, and Dickens, and the old, old stories. We are becoming the people that, once upon a time, our ancestors used fairy tales to warn their children against.

NOW, Francis Bacon's scientific vision of modernity is not the only one. There is also a literary vision of modernity. And from Mary Shelley's *Frankenstein* to Aldous Huxley's *Brave New World*, the literary imagination has not pictured the prospect of manufactured human beings with much joy. From Robert Louis Stevenson's *Dr. Jekyll and Mr. Hyde* to H. G. Wells' *The Island of Dr. Moreau*, the literary imagination has not been much taken with scientists who manipulate the deep things of life just because they can.

The truth is, after reading these authors, I worry about people who reach into the stuff of life and twist it to their will. I worry about people who act simply because they can. If they lived in crumbling castles—their hair standing up on end and their voices howling in maniacal laughter—we'd know them to be mad scientists. But they wear nice white lab coats, and their pleasant-looking chief executive appears on television to assure us that they are really acting for the best of medical motives and, besides, there is a great deal of money to made in biotech and pharmaceutical stocks.

Sometimes the disingenuousness is unbearable. Evading the regulations in France, the French company Clonaid recently opened a laboratory in Ivory Coast, and its spokeswoman announced that they had done so in response to the great demand for cloning in sub-Saharan Africa. Ah, yes, my wife suggested: Those poor, starving Africans, desperate for food, drinking water, and the latest fads in biotechnology.

But Clonaid's move to Africa seems to me a final proof of the dangerousness of unlimited human will. The people who say that this technology can be regulated are simply ignorant of human nature. If you were to put up a lever with a sign that said, "Don't touch or the world will be destroyed," the paint wouldn't even be dry before someone's last words were, "I just wanted to see what would happen."

We have to applaud the seriousness that Leon Kass has brought to Washington, the tone and tenor of the delibera-

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tions, and the report that issued from the President's Council on Bioethics. But I think we must also raise questions about the civility that is the report's finest feature.

A reply

LEON R. KASS

THESE were deeply searching, very thoughtful, very well-considered comments. I regard these remarks from the four of you as an enormous gift to our enterprise.

One way to join comments made by Diana Schaub, Charles Murray, and Bill Galston is to raise a question. Bill Galston raised it very nicely when he asked whether we are dealing in a moral realm of prudence or in one of absolutes and categorical imperatives. Are we in a realm without inflexible "Thou shalt nots" or are we in one where there really are abominations like slavery? If we are dealing with moral abominations, then to say "on the one hand, on the other" is, as Jody Bottum suggests, to lend countenance and cover to genuine evil. The report's ambiguity on this question is not solely due to the chairman's uncertainty but is I think a genuine perplexity. Is cloning human embryos for research really like slavery?

The people who have argued against abortion have also drawn an analogy to slavery, the difference being that the youngest amongst us don't look enough like us to gain our empathy. Without lawyers and unable to speak for themselves, unborn children do not gain our support, and the evil perpetrated against them is too easily overlooked. In this view, there can be no compromise with a deep violation of principle, no matter how noble the end. On the other hand, if we really are in the situation of choosing between competing goods, as Bill Galston suggests, then it is a question of calculation, presumably in the name of not just safety and efficacy but larger things. This is the realm of prudence, not principle.

I go back and forth on this. It does seem to me that the moral life has to be lived somehow as a combination of principle and prudence. There must be some boundary conditions of "Thou shalt nots." And only thanks to the fact that there are certain firm and nonnegotiable limits do we have a safe moral realm in which prudence can govern.

I am inclined to say that creating nascent life for the sole

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purpose of exploitation and research involving its necessary destruction would transgress a moral boundary of that indispensable sort. However, though I am sympathetic to the arguments of Jody Bottum and Diana Schaub, and despite the fact that I regard the embryo as somehow mysterious, I don't believe that it is fully "one of us" (here I speak for myself, not for the council as a whole). The challenge that James Q. Wilson posed is a good one. We do not treat the demise of the five-day-old embryo as we do the death of a child, and we don't react with the same kind of horror—though maybe we should—at the dismemberment of 100 cells for the sake of saving lives as we would if we killed a two-year-old child to remove his kidneys so another child might be saved.

YET it may very well be that such moral sentiments are a poor guide here. So let me shift to that question and take it up directly. I think repugnance is not an absolutely firm guide in these matters, but it is a warning. The deepest things especially are very hard to capture in precise and rational speech. We cannot rationally articulate the horror that is father-daughter incest. If we tried to make the argument, we would imperil our conviction that this is an abomination. I don't think we can fully make an argument as to what is wrong with rape or murder or cannibalism. Our revulsion at these things is a guide that we are defending something that runs very deep. Argument can come to our aid, especially in a culture where the endless chatter of self-styled "rationalists" tends to undermine our intuitions about these things.

And if one lives in an age without a shared sense of what is seemly and what is abominable, and everything is up for grabs, perhaps nothing is left but to get Jody Bottum out on the political stump. But public discourse cannot, I think, conduct itself on the basis of Jody's unique rhetorical and prophetic brilliance.

So where are we? There is no denying that the questions about cloning-for-biomedical-research are in a way bound up with the abortion controversy. Jody Bottum argues that it is far worse to create nascent human life to destroy it for the use of the living than it is to start down the road of baby manufacture and working our will on living children. I am not sure about that. It seems to me that death and destruction—horrible though they be—are old matters. What is really new is not the immorality of the means that we use to gain

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our new powers but the things that these new powers make possible. In the future, we will be able to work our will upon untold future generations to turn them into creatures after our own image. That I think is really something novel and worth arguing about, independent of the question of the destruction of nascent life.

On the other hand, though I cannot believe that destroying an embryo is tantamount to murder, I am always impressed with the people who bear witness on this subject—even if they are going to lose in the end. They have a deep reverence for what our humanity is in its earliest form and have risen to defend it. I can't persuade myself that they are not right.

BUT to respond briefly to Diana Schaub, nor can I persuade myself that cloning is akin to slavery. Yes, new lives would be created, and on a mass scale, purely to serve other people's purposes. And, yes, such innocent, nascent lives would be willfully exploited and destroyed. And I even agree with Diana Schaub that the path to biomedical despotism and degradation can be guided by the words "progress, compassion, and choice." But I am not sufficiently confident about the ontological or moral status of a five-day-old embryo to speak in such abolitionist terms. At the same time, however, I am inclined to give the embryo the benefit of the doubt, refusing to corrupt myself into thinking that we can use with impunity the seeds of the next generation to save our own. Otherwise we will have hardened our hearts, becoming incapable of resisting when the compassionate healers want the boundary of permissible exploitation moved from five days to five weeks or even five months.

In the view of Charles Murray, the council's enterprise is futile. But my interest in the subject of cloning goes beyond whether or not we should engage in it. My interest is also in whether human beings through their political institutions can exercise at least some control over where biotechnology is taking us. Cloning is an occasion to see whether the community can exercise the will and discipline to make its moral voice heard, and to be a teacher of what can and can't be allowed.

Cloning-for-biomedical-research has, alas, confounded the question, for it is really a small piece of embryo research in general. We should be arguing about cloning-for-biomedical-research in the context of all embryo research. Certainly, it would be no victory for the pro-life movement to ban the creation of cloned embryos for research, while allowing the

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creation of embryos for research by in vitro fertilization in the private sector to continue without any limits.

So let's just talk about cloning for baby-making. This is an opportunity to shift the burden of proof from the opponents to the proponents of cloning, to those who would challenge what makes us human. Let's say to the people who want to produce cloned children, "Show us why this is a necessity." The proponents have the obligation to explain why this is not just a whim but something society should countenance. A legislative ban in this country would shift the burden of proof, even if, in fact, there are renegade scientists elsewhere in the world who would practice it.

Charles Murray may be right that an opportunity to engage the scientific community was missed. Perhaps we should follow the British model and directly involve the biotech companies and their scientists, and design some kind of regulatory scheme. We could set a boundary of seven or ten days beyond which embryo research would not be allowed. We would let the scientists do some things that may make us uncomfortable in the hope that the worst disasters could be prevented.

YET such prudential boundary lines will always be moveable. Today, the focus is on stem cells. Five years from now we may discover that by putting these little embryos into a pig uterus and growing them to two months, their kidneys and primordial livers are even more valuable than the stem cells. We will find that the line we have drawn around stem cells will not hold, and we will live to regret our earlier desire to be "reasonable" and "prudent" when crossing important moral boundaries.

I am not quite so nihilistic as Charles Murray about the possibility of effective intervention. True, there is little precedent for the control of scientific progress. On the other hand, we have refused to allow the buying and selling of organs for transplant, even though markets in organs would yield more organs. This is a proscription that might not last, but it has managed to hold, at least for the time being.

Many nations have enacted bans on all cloning, and, in fact, there is a convention under deliberation in the United Nations right now on whether to ban cloning. The French and the Germans want to restrict the international ban to cloning-to-produce-children only because they already have embryo laws in place in their own nations. The United States is leading a coalition to produce the kind of ban that President Bush fa-

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vors. I don't see any reason why we should shrink from this effort. Certainly, much of biotechnology is wonderful, but the scientific community should understand (and it is in its best interest to do so) that progress must proceed within moral boundaries set by the norms of the international community.

Moreover, it is simply not true that this research can't progress within certain moral boundaries, providing that the boundaries are not too severe. And it seems to me that the United States should be a leader in determining what should and should not be done, rather than playing catch-up, as we have been to this point.

THE United States is unlikely, unless we step forward in this matter, to remain the center of *ethical* biotechnology. Yes, the Chinese might be less restrictive, but because we are Americans, because we believe in progress, and that if something can be done, it will be done, because we believe in the freedom of entrepreneurs, of scientists, of users, because we believe in compassionate humanitarianism—for all of these reasons, we will have a very difficult time being the moral teacher of the world in these matters. The fact is that the moral principles that govern us—life, liberty, and the pursuit of happiness—are not sufficient to defend human dignity from biotechnology's onslaught.

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The independent mind of Edward Banfield

JAMES Q. WILSON

THOSE of us who were privileged to know Edward Banfield can only with some difficulty convey to others his true greatness. If you neither knew nor read him, he is unknown to you, for he had no interest in fame or publicity. On one occasion, the publishers of *Who's Who* announced that he would be included in their next edition. He wrote back to say that he did not want to be included; if they printed a sketch of him despite his objections, he would sue them. Had he thought that his writings would bring him fame, he would no doubt have molded his bold arguments to fit the temper of the times, and so never would have suggested that political machines are useful, that most urban problems are spurious and the few that exist cannot be solved by any popular remedy, and that art museums should display perfect copies of their paintings and sell the originals to

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people foolish enough to think they can tell the difference.

If you read his books but did not know the author, you might well be intrigued, but since you would be surrounded by people who believe that the opposites of these claims are true, you would be left alone to defend heresy against orthodoxy, no easy task. But if you knew Banfield you would have understood first-hand why his great intellect and coherent arguments stood so powerfully against much of elite opinion. You would have understood, in short, why this man of common origins and an uncommon mind tested the conventional opinions of intellectual elites against the practical needs of ordinary people.

Prophet without honor

In time, much of what Banfield wrote was accepted by bright people as, slowly and unevenly, they were mugged by reality. In 1955, he and Martin Meyerson published a book about Chicago public housing projects, explaining why these tall, grim buildings, located in areas that guaranteed racial segregation, were a serious mistake. At the time this was a powerful dissent from the view that housing projects must be built and that alternatives—such as supplying vouchers to those who needed financial help in renting housing—were unthinkable. Today, vouchers are intellectually respectable, and some housing projects are being dynamited to remove these eyesores from their cities.

In 1958, Banfield, with the assistance of his wife, Laura, published *The Moral Basis of a Backward Society*, in which they explained why a region in southern Italy was poor. The reason, they said, was not government neglect or poor education, but culture. People in this area were reluctant to cooperate outside of their families. This kind of "amoral familism," as they called it, was the result of a high death rate, a defective system of owning land, and the absence of extended families. By contrast, in an equally forbidding part of southern Utah, the residents were engaged in a variety of associations, each busily involved in improving the life of the community. In southern Italy, people did not cooperate; in southern Utah, they scarcely did anything else.

Foreign-aid programs, Banfield later wrote, ignored these profound cultural realities and instead went about persuading other nations to accept large grants to build new development

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projects. Few of these projects led to sustained economic growth; indeed, the grant money was often stolen by local political elites. As P. T. Bauer later put it, foreign aid was a policy whereby poor people in rich countries had their money sent to rich people in poor countries. Where rapid economic growth did occur, as in Hong Kong, Singapore, and South Korea, foreign aid, to the extent it existed at all, made little difference. Today, scholars recognize the great importance of culture in explaining why some areas of the world are poor and others prosperous. Few of them, however, refer to Banfield's writings. One recent exception is *Culture Matters*, edited by Samuel P. Huntington and Lawrence Harrison, which was dedicated to Banfield.

In 1970, Banfield published his most famous book, *The Unheavenly City*, in which he argued that the "urban crisis" was misunderstood. Many aspects of the so-called crisis, such as urban residents' flight to the suburbs, were not really problems at all, he argued, but instead great improvements in human lives. True problems such as crime, poverty, and racial injustice continued to exist because we do not know how to end them.

Take the problem of poor African Americans. Racism, though much diminished in recent years, still exists and has significant effect. But the central difficulty for many black Americans is not racism but poverty, and a large part (though far from all) of that poverty, Banfield argued, arises from a lower-class culture. By this he meant a culture that reflects a short time-horizon, in which life consists in living from moment to moment. To the extent people in such a culture think about the future, they feel it is largely shaped by fate, not by their own activities. They are interested in present action, and among males, in risk-taking, fighting, and respect. The last quality is especially important to people who have trouble making friends and who resent any sign of authority. A lower-class culture is often the product of female-headed households where women have a series of lovers, none of whom take much responsibility for raising the children that result from casual encounters. This is a problem for all lower-class people, white or black, but for blacks it acquires a special edge because "much of what appears ... as race prejudice is really class prejudice."

Banfield predicted that his book would "probably strike

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many readers as the work of an ill-tempered and mean-spirited fellow," and he was absolutely right. Academic denunciations were hurled down on him; he was called, among other things, a reactionary and a racist. Within 20 years, however, books were appearing that, without mentioning Banfield, discussed how social class had shaped inner-city life for African Americans. In 1987, William Julius Wilson wrote in his widely acclaimed book *The Truly Disadvantaged* that though racism exists, social class could explain the plight of many blacks. To Wilson, an "underclass" existed because of the absence of inner-city jobs. Banfield would have agreed, up to a point, but he would have argued that there are also independent cultural factors at work.

In 1990, sociologist Elijah Anderson published a book that completed Banfield's analysis. In *Street Wise*, he wrote about African-American adolescent boys living in a poor neighborhood. These youth lacked concern for the future, regarded sex as an opportunity for conquest rather than an aspect of marriage, and valued above all the respect of their peer group. The result was a growing number of unwed parents who raise children in what Anderson calls "unprotected nests." The book was widely praised, often by the same people who had denounced Banfield's book 20 years earlier.

Edward Banfield's life is an example of that old saying about a prophet without honor in his own country—or at least in his own times. He was a boy raised on a Connecticut farm who later found himself plunked down in a scholarly Camelot: Harvard University. There he met the intellectual Knights of the Roundtable and their allies in other high places. But Banfield, like the "practical Connecticut farmer" whom Mark Twain portrayed in his famous novel, used his native skill to defeat Merlin and other mental magicians.

Humble beginnings

Edward Christie Banfield was born on November 19, 1916, in Bloomfield, Connecticut. He once remarked that his father was a farmer "by temperament and taste" while his mother "adored the city," and so they compromised: His father worked in a Hartford factory, but they spent much of their time on a

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small farm in Bloomfield. Living in both places bequeathed to Banfield a somewhat distant perspective that allowed him to better understand both. He wrote perceptively about city and rural life and lived in both worlds: in the cities of Chicago, Cambridge, and Philadelphia, but with long visits to Utah and southern Italy and summers on the Vermont farm that he and his wife tended with great skill and affection.

Although his family was Unitarian, Banfield never professed any religious beliefs. He later described Unitarians as a church that "believes in one God, at most." But like many nonbelievers, he thought it important for society, created and sustained by custom and belief, to think of some things as sacred. Just how one might reconcile personal skepticism and social reverence was never clear to him. On one occasion, having spent weeks reading some important Biblical works, he said to me that religion might be a good idea if its leaders did not write such nonsense.

As a young man, Banfield went to Connecticut State College, where he intended to study animal husbandry. But after a short exposure to books about cows and pigs, he announced to his roommate that he was sick of livestock. The roommate sternly replied that if Banfield was going to speak critically about animals he would invite him to step outside for a fight. The fight was avoided, and Banfield became an English major. He was a gifted writer and soon became editor of the college newspaper. In college he met Laura Fasano, who was one year ahead of him, and in September, 1938, they were married.

Upon graduation they found themselves in the midst of the Great Depression. Jobs, especially for writers, were few and far between. The search for decent employment caused them to move repeatedly. At first, Laura worked in the animal disease laboratory at the U. S. Department of Agriculture, while Edward took a job selling advertising at the Rockville, Connecticut, newspaper. In 1939, he took a job at the New Hampshire Farm Bureau Federation and the couple moved to Concord, New Hampshire. The following year he took a better offer as a public-relations man for the Farm Security Administration (FSA), an important New Deal agency, but this meant moving again, this time to Upper Darby, Pennsylvania. Two years later, keeping the same job, they moved to Indianapolis,

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and a few months afterwards they went on to Washington, D.C. It was in this period, Banfield later remarked, that he began to learn about bureaucracy.

Banfield gradually became disenchanted with the FSA. He was later to say that its policies often hurt the very people—tenant farmers—that it was trying to help. He was thinking of quitting the agency, but he had no other job available to him. His next job, however, was to materialize out of a happy coincidence. It seems that the FSA was planning to destroy some old files, and one of Banfield's acquaintances, Paul S. Taylor, a professor of economics at the University of California at Berkeley, expressed an interest in their contents. Banfield agreed to write for Taylor a memo about the files, and Taylor saw to it that this memo came to the attention of Rexford Guy Tugwell, an important member of Franklin Roosevelt's "brain trust." Tugwell was impressed with Banfield's intelligence and knowledge and invited him to come to the University of Chicago where Tugwell was going to head a new program in planning.

Intellectual influences

Banfield became a graduate student in political science at what was a remarkably fine and intellectually exciting school. That excitement had several sources. The University of Chicago began as a graduate school and took graduate instruction very seriously. Most faculty lived within easy walking distance of the campus, thereby allowing community contacts to reinforce university ones; it was intellectually diverse, with people from the Left and Right both present and working amicably together. And as Milton Friedman later remarked, it was a thousand miles from Washington, D.C., and thus free from many of the distractions of national politics.

Banfield was especially drawn to the classes taught by Herbert Blumer, a sociologist, who introduced him to the writings of William Graham Sumner and George Herbert Mead. He learned about the sociology of knowledge in classes taught by Louis Wirth. Another important influence was the social theorist Edward A. Shils, with whom he collaborated in writing some conceptual models on such topics as authority and influence. He began to acquire in these studies a larger view of how society worked and human personalities were formed.

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Though he took no courses from Frank Knight, the latter's writings—especially those on the role of risk, uncertainty, and entrepreneurship—were very important to Banfield, as were courses taught by the agricultural economist Theodore W. Schultz. Later on he would remark that many of his best ideas were derived from Knight's work. Though the Chicago economics department was a center of free-market thinking, Banfield was not drawn into it. He did not get to know Milton Friedman well until after he had moved to Harvard and acquired a farm not far from Friedman's summer home.

Banfield became interested in the theory of planning through his acquaintance with two young Chicago scholars, the economist Julius Margolis and city planner Martin Meyerson. Banfield focused on the theoretical basis of planning, the very enterprise in which the FSA was involved, by a close reading of many philosophical texts and an examination of the arguments about rationality offered by Herbert Simon and Chester Barnard. This work led to a profound change in his outlook, one that helped him understand that his unease with the FSA reflected not merely a job mismatch but an intellectual rebellion.

But Banfield's revolt took a few years to run its course. Though he was an increasingly disillusioned New Dealer, he was not yet a defector. In 1952 he voted for Adlai Stevenson for president, and during the late 1940s and early 1950s he published papers, some written jointly with Tugwell, in which he defended the planner's view that governmental affairs would be better managed if decisions were made rationally.

A planner's faith

Banfield believed that when you wrote a seminar paper for a course it ought to be good enough to be published. Many of his were, and so we have a coherent view of his thought while he was a student and young university teacher in his early thirties. These writings were of two sorts: empirical and rather critical accounts of government programs he knew from the inside, and conceptual and rather idealistic papers about how he thought government ought to function. The critical accounts and the conceptual proposals were, for a few years, not really brought together. Banfield was changing, but like most

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important intellectual changes his did not happen in a blinding flash of newfound insight but rather in a slow working out of difficult puzzles. Moreover, these puzzles had to be worked out in tumultuous economic and political times. The nation had entered the Second World War from the depths of the depression, and many serious thinkers believed that when the heavy government expenditures of the war ended the nation would collapse back into an economic recession. Key people in the federal government were trying to prepare for this by seeking to strengthen federal agencies, such as the National Resources Planning Board, that might engage in economic planning. Outside the government, many economists were predicting the worst, and political radicals were looking forward to a chance to renew their demands for fundamental social change. But when the soldiers and sailors came home, prosperity erupted as accumulated earnings were spent on new homes and cars. The migration from farms to cities, already underway before and during the depression, now became even more pronounced.

In 1949 Banfield wrote about this change in an article for the *Journal of Farm Economics*, in which he evaluated Washington's efforts to help tenant farmers. During its 10-year effort, the FSA had managed to make loans to only about 2 percent of all the tenants; at this rate, it would take 400 years for the program to reach all of them. To make matters worse, Congress had imposed limits on the size of the farm a tenant could buy with his federal loan, and the limit was so small that few such farms could be economically efficient. Banfield noted that a main reason for this limit was to prevent black farmers from getting ahead. For him, the answer to this problem was obvious: Encourage farmers to leave the land and join the migration to the cities where many jobs were available. But he was still wedded to some of his old FSA views: The farm loan program, with its "emphasis on planning and supervision, would be wonderfully well fitted" for the task of assisting "boldly and creatively in the reorganization of Southern agriculture." By reorganization, he appears to have meant breaking up "the large corporate land-holdings of the South and West."

That same year and in the same journal Banfield pointed out the failure of the Department of Agriculture to do much

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about reducing farm surpluses. The department had spent a lot of money on research and marketing in order to find new uses for agricultural products and facilitate the sale of those that existed, but the surpluses continued to increase. What was supposed to be detached science turned out, on close inspection, to be politically influenced. But when he considered what might save this program from ineffectiveness, Banfield still concluded the answer lay in planning. The existing program was claimed to be planning, but in fact it was not, and this was unfortunate because "planning may serve a useful purpose by changing the terms of the power struggle." To confirm this, Banfield pointed to city planning, especially the development of master plans, in which "a desirable pattern of growth" is projected "far into the future" so that existing projects can be judged by how well they conformed to the plan. Many years later, he told me that the Department of Agriculture responded to this article by saying that it did plan, but on a day-to-day basis.

Banfield applied his argument for planning to the entire federal government, but still in the context of an empirical account of why it was not likely to work. In 1949, he published another important essay, arguing that the congressional budget process had much to learn from systematic planning. Budgeting, he wrote, should be a process whereby scarce funds are allocated among competing purposes "in a manner calculated to achieve the optimum result." But in reality the budget was not that at all; instead, it was merely a collection "of bits and pieces gathered up from the various bureaus" that Congress used as a way of managing the bureaucracy. People had made various suggestions as to how this process might be improved, but none of them appeared to him to be very promising. Some wanted congressional committees to have larger staffs, but no staff of any feasible size could possibly learn all that would be required for comprehensive planning. Others called for a more unified, coordinated approach to fiscal policy, but Congress had already done that in ways that had had little practical significance other than to increase its ability to manage the executive branch. And still others suggested that Congress estimate the total revenue to be spent before deciding how to spend it, but Banfield saw no way whereby Congress

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could know in advance how much tax money would be available and no reason to think that Congress would care very much if it did. (A quarter of a century later, the idea of a single revenue estimate and an omnibus spending bill had been adopted by Congress, with exactly the results he predicted.)

Banfield went on to raise even deeper problems. There is no human way of weighing all of the uses to which funds might be put and no political (and possibly human) means to fully reconcile conflicts among the goals on which these funds might be spent. And even if these problems could be overcome, how would the government deal with unanticipated events, such as a war? "No full or partial answers can be given to any of these questions"; nevertheless, he added, "it is possible to offer some tentative and partial answers." The lessons, again, were to be found in the city-planning movement and in industrial scientific management. "It is true that we cannot plan when there is conflict over goals," but "we may hope that the time is not far off when the old notions of individualism will have given way to a more workable conception of man and society." He did not say what this workable conception might be except to suggest that in cities, where all of the big problems had been settled, "government has become an undramatic technical matter which can safely be left to the experts." The federal government had not yet entered this happy state, but in the meantime we could make use of a "scheme of values" to help us measure the relative value of schools and hospitals and to develop a system of social accounting that would help us assess alternative means. We could not plan scientifically, but at least we could do so with more, rather than less, rationality. This planning would be done by each government bureau under the leadership of a Central Planning Agency. Every year the latter would provide Congress with a six-year financial program to implement the plan and then assess how well government actions had achieved its goals.

But within two years much of Banfield's rationalistic optimism would be in retreat, and by 1956, when as a graduate student at Chicago I first met Banfield, hardly a trace of it would be left. I am not certain how or under whose influence his views changed so greatly, but I suspect that he arrived at

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this conclusion independently. The more he thought about the facts, the less likely rational planning appeared to be.

The problem of cooperation

In 1951 Banfield published his doctoral dissertation as a book, *Government Project*. The volume had grown out of that first memo he had written for the Berkeley economics professor who had been interested in the FSA. It explained how the Resettlement Administration had failed to achieve its goal, namely, to relocate desperately poor farmers onto cooperative farms. By a close study of one such farm in Casa Grande, Arizona, Banfield was able to show that despite the dedicated and efficient efforts of honest federal bureaucrats, and notwithstanding the creation of a farm that raised their incomes, the farm failed for one profound reason: The farmers would not cooperate. Though there were never more than 57 families there, these settlers were unable to cooperate "because they were engaged in a ceaseless struggle for power." That struggle may have been caused by their sense of having failed in life, by their aggressive personalities, or by hostility toward other settlers, but whatever the cause there was no way for the farm to satisfy all of the demands for power and status. At only one time did things run more or less smoothly, and that was when, for a year or so, one government-appointed project manager made it clear that he was the boss and thus there would be no opportunities for farmers to share power. Banfield linked this state of affairs to Chester Barnard's theory of organizational incentives which recognized the importance of noneconomic motives. To lead, Barnard said, one must often rely on "intuitions that are correct, notwithstanding doctrines that deny their correctness."

Tugwell, who once ran the Resettlement Administration, wrote a foreword for the book in which he admitted that Casa Grande was a failure—"one of many," he added. In retrospect, "we were doomed to failure from the start."

This book, and Banfield's reflections on the cooperative farm, was, in my opinion, the central fact in his intellectual development. In the years ahead, the focus of his inquiry became an enlarged version of the Casa Grande question: How can people be induced to cooperate? And since some

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degree of cooperation is essential for any society, the larger question is: How can a decent society be sustained?

In the same year that the book appeared, Banfield and Tugwell published a jointly authored article in the *Journal of Politics* that was, I suspect, Banfield's last effort to keep some life in his now eroding view that human affairs could be greatly improved by rational planning. It was a remarkable essay in that it both laid out in compelling prose the many reasons why people find it hard to cooperate under expert planning, and argued that some way must be found to make them do just that. Its central argument was that we must create "governmental institutions for discovering and objectifying the future," a need that required Americans to ignore *Federalist* 10 and protect some important matters from "meddling" by legislatures and politicians. To do this, Congress must make only broad "value judgments," leaving the contents of policy to be decided by executive-branch planners. In this way, the authors suggested, we can avoid another Great Depression. The beginnings of this approach could be found in city planning, forestry conservation, and industrial scientific management, but for these auspicious starts to affect the national government much more would be needed.

Their article set forth many questions, all stated so that they could be answered in ways that favored planning, but which taken all together implied to the careful reader that the "right" answers would not be forthcoming. The questions were these: Will the government accept permanent responsibility for the future? Can the right to private property be altered to permit more planning? Can we agree on national goals? Will Congress confine itself to making "fundamental value judgments"? Will planners acquire a rationale or theory that will give them the criteria for making choices? Can special interests be prevented from blocking the government's efforts to build a "fiscal policy in the general interest"? Will the new Council of Economic Advisers be able to give "correct advice" so as to maintain economic stability? Will the government acquire more power to control the decisions made by businesses? Will newspapers and radio broadcasts stop relying on controversy so that an "adequate public will" can emerge?

At the time Tugwell and Banfield wrote this article, Friedrich

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Hayek had already argued that planners would never have the information necessary to achieve their purposes, and in trying to get that information (and power) planners would destroy human liberty. The authors recognized and rejected this argument because "there is no evidence" that planners lack the necessary information, and because people do not "regard liberty ... as the ultimate goal."

Beyond planning

Between 1951 and 1955 Banfield finally let go of the planner's illusion. His 1955 book with Martin Meyerson on housing plans in Chicago was not called "Planning Housing," but was given the far bolder title, *Politics, Planning, and the Public Interest*. Meyerson was a consultant to the Chicago Housing Authority who kept detailed notes on its deliberations; Banfield developed the theoretical basis for the book and wrote much of its contents.

The conceptual scheme for the book expressed his final break from his planning background, for in it he laid out in tight, logical form the various ways in which organized human activity occurs. In this he was influenced by his intellectual relations with the social theorist Edward A. Shils. His conceptual scheme deserves careful study, not only because Banfield explains what he has learned but also because he sets forth a profound insight into how people manage on occasion to work together. By *politics* he meant the activity by which some human disagreement is managed. There are four ways to do this, only one of which is cooperation; the other three are contention, accommodation, and dictation. Cooperation is the most difficult of the four, because it requires that people agree on the ends to be served (which rarely occurs) or on some procedural principle by which disagreements can be decided. To the extent cooperation occurs, it often is because someone—a politician, for example—has arranged for incentives to be offered to the contending parties, a role that makes politicians far more important than the kind of meddlesome miscreants described in the Tugwell-Banfield paper.

A *plan* is a feasible and rational course of action that someone believes will achieve a set of ends. But for a plan to be rational—that is, for it to achieve a set of ends better than

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any alternative plan—it must be based on some unusual (and politically unlikely) circumstances. The author of the plan will have to consider all the alternative courses of action, evaluate the consequences of each alternative, and select that course that will produce the greatest gain in terms of the ends desired. With this explanation, Banfield was following the lead of Herbert A. Simon, a scholar with whom he had some disagreements but from whose definition of rationality he learned a great deal. Planning implies extraordinary knowledge (precisely the kind of knowledge that Hayek argued people do not have): The planner must be able to state all of his ends, reduce them to concrete alternatives, and evaluate each alternative. This is sometimes possible in private firms that have limited objectives, but it is rarely so in public ones that have many ends, countless courses of action, and a great likelihood of unintended consequences.

The *public interest* cannot be understood simply as a statement of what is good for society, because people will not easily agree on what constitutes either the "public" or its "interest." Indeed, there are two ways to define the public interest, the first as a unitary view of what is good for everybody and the second as the summation of individual preferences. The former conception implies government action, the latter market action. But Banfield had no simplistic faith in markets, for as he noted, some people's ends are more important than those of others. (We do not, for example, weigh the goals of a Ku Klux Klan member the same as we weigh those of an African American seeking to buy a home in a white neighborhood.) Markets are splendid ways of allocating resources among ends we regard as morally equivalent but not as adequate when important moral differences exist.

The discovery of "culture"

Not long after his thesis was published in 1951, Banfield, together with his wife and children, went to the small Mormon town of Gunlock, Utah, to study what he then called the "sociology of efficiency." Impressed by what he learned of the cooperative farm in Casa Grande and still of the view that planners could teach people how to farm more efficiently, Banfield wanted to find out whether low-income farmers liv-

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ing voluntarily in a desolate area would work together any better than others had on the government-sponsored cooperative farm. He concluded in his 1953 unpublished manuscript that the 22 Mormon families of Gunlock did not engage as much as they might in cooperative action and community planning. When he reached this conclusion, he had not yet seen what uncooperative behavior really looked like, and so he was critical of farmers whom he later realized were cooperating to a remarkable degree. But his views would be transformed in Chiramonte.

The transformation began when Banfield and his family went to a small town in the poorest part of southern Italy, one to which he gave the pseudonymous name of Montegrano but which was in fact Chiramonte. His intellectual interest remained unchanged: Under what circumstances will people cooperate? But now he posed the question more broadly. If cooperative activity was essential to economic growth, might the absence of that growth be attributed to the absence of cooperation? There was little such cooperation in Casa Grande, but these impoverished farmers had been wrenched loose from the grim hovels in which they had lived during an economic disaster. By contrast, people had lived in Montegrano since the beginning of time; still, it remained desperately poor.

To explain why, Banfield wrote, with the assistance of Laura, *The Moral Basis of a Backward Society*. It is a masterpiece, one of the great classics of modern social science. In less than two hundred pages, Banfield destroyed the argument that some physical or economic problem kept these Italians poor. Their problems were instead political: People scarcely participated in political activities, turned strongly against whomever was elected to office, did nothing about the poor quality of schools, and would not campaign to get a hospital built there (the nearest one was five hours away). The conventional explanations for their failure to cooperate were that they were so poor and so lacking in schooling that they could not organize. As a result, the argument went, the inhabitants were divided by class antagonisms, afflicted by a deep distrust of the state, and ignorant of political life.

But Banfield showed that each of these explanations was either wrong or seriously incomplete. The Montegranese were

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indeed poor, but each had a lot of free time that could easily be donated to some community undertaking. They were uneducated (many were illiterate), but they understood at least as much as working-class Americans about politics and parties. The rich and the poor led separate lives, but the poor made no effort to organize against the largely powerless and civically idle rich, nor, when they voted, did they usually vote along class lines. And they did not pathologically distrust the state; when interviewed, they tended to give balanced assessments of people in government.

The central difference between the people of Montegrano and those in Gunlock, Utah, where natural resources are as scarce as in southern Italy, is that in the American town, people cooperated industriously: They contributed to the church and to other, often distant, causes; they formed voluntary associations, campaigned for local improvements, and worked to support the schools. In contrast, the Montegranese maximized the material, short-term interests of the nuclear family and assumed that everyone else would do the same. This attitude, which Banfield called "amoral familism," was consistent with the results of a psychological assessment—the Thematic Apperception Test—that he gave to many residents. People cared very much for their own families and not at all for other people. This amoral familism developed, Banfield speculated, out of an abiding fear of premature death, a land-tenure system that made the formation of extended families very difficult, and other complex factors.

When Banfield had finished this research, he realized the error of his conclusions about Gunlock. His earlier study had been written under the assumption that these Mormon farmers did not cooperate *enough*, when in fact they cooperated to an extraordinary degree. Once the presuppositions of a rationalistic planner had been abandoned, human beings could be seen clearly and cultures distinguished from one another, not as compared with some idealistic standard but on the basis of how people really behaved.

The Moral Basis of a Backward Society, later regarded by many scholars as a seminal work, was largely ignored when it appeared. It was first printed as photocopied typescript and was rarely reviewed. Scholars were not yet ready to accept

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"culture" as the answer to any practical question. Surely the answers must involve money, leadership, and planning. Banfield said that, important as these things may be, they did not explain the fundamental facts. A third of a century later, it was cited approvingly in Robert Putnam's important book on how democracy works (or fails to work) in contemporary Italy.

The importance of politics

At this point Banfield might well have returned to Gunlock, Utah, to get a fresh view of its communal life, but his empirical research (though not his intellectual focus) was redirected by a generously funded invitation to write a book about Chicago politics. He examined several case studies of that city's civic issues and made them the factual core of an impressive account of human conflict and political leadership. The book, *Political Influence*, was about one way of achieving human cooperation—the use of influence. To Banfield, influence—the ability to get others to act as you intend—was essential in American politics because people disagreed about means and ends and because governmental authority was highly fragmented. At the time he was writing, influence had become a hot topic in American political science, but much of what was written about it was based on opinion polls about who had "power" or exercised "leadership." These approaches led to unreliable generalizations about the great (and, as the authors supposed, adverse) influence of business leaders on government decisions. Banfield wanted to know how concrete issues were actually decided, and so he studied six major controversies in Chicago and drew his conclusions about influence from his detailed account of who did what for (or to) whom.

Civic disputes in Chicago, he concluded, did not result from struggles for votes, competing ideologies, or the work of a shadowy power elite; they arose instead from the maintenance and enhancement needs of large organizations. One organization (say, a hospital) wanted something, another organization (say, a rival hospital) opposed it. The resulting conflict had to be managed by an outside authority if it were to be settled at all, and in Chicago, politicians did most of the managing. But that management was hardly dictatorial. Though

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Chicago politics was organized around a powerful political machine, the machine did not simply impose its will. Instead, the mayor let every interest get its say, postponed decisions until some common ground could be found, and then nudged the contestants in that direction.

To many people—and to Banfield when he believed in planning—the great defect of the Chicago system was that it did not provide "sufficient central direction." If that central direction had been imposed, planners (and a younger Banfield) might have claimed that the result would have been a "comprehensive and consistent policy" that was more in accord with the public interest. But now Banfield argued the opposite. The politically managed results were in his judgment remarkably good. People might disagree about how some issues were resolved, but to him these outcomes were ones he would have chosen had he been making the decisions. In Chicago, of course, the outcomes were less the result of decisions than of protracted exercises in political influence. But despite the fact that the "wrong" reasons (that is, reasons that were illogical, irrelevant, or even improper) governed the outcomes, these outcomes were nevertheless correct. Even if one disagreed with this judgment, one still had to admit that often "obviously wrong" reasons will, at least sometimes, lead to results that are "not obviously wrong." Politicians should not be confined to making broad value judgments, leaving to experts the role of making choices. Rather, because of the time they spend discovering and evaluating the probable consequences of an action, politicians tend to improve final outcomes even when they decide, as they sometimes do, that nothing needs to be done.

Banfield took his manuscript to Mayor Richard Daley to get his reaction, saying that he could not promise to change anything to which the mayor objected, but that he would take his views into account. In time, he was summoned to Daley's office, where the mayor was in a rage. The author worried that he was in for big trouble. "You can't print this," the mayor fumed. "You quote me uttering some vulgar comments. Don't you know my daughter is a nun? What is she going to think when she reads this?" Banfield promised to remove the vulgarities.

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The new study of urban affairs

In 1959 Banfield left Chicago and accepted an appointment as a professor of government at Harvard, where Martin Meyerson, who had earlier taken a post there as a professor of planning, had urged his selection. There Banfield decided to extend his argument about politicians by writing a general book on city politics. He recruited me as his coauthor and we began writing the book while my family and I spent the summer of 1961 with the Banfields on their Vermont farm. From the first it was obvious that he no longer held his 1949 view that city government is an "undramatic technical matter which can safely be left to experts." City government was about politics, and that was a good thing, too. On the very first page of *City Politics*, published in 1963, the reader is told that the day-to-day workings of city government are best understood "by looking at the differences of opinion and interest that exist within cities, at the issues that arise out of these differences, and at the ways institutions function to resolve (or fail to resolve) them." That may all seem obvious today, but when we wrote, most of the published studies of urban affairs were administrative accounts of how cities were organized. In these scholarly books, one learned more about appointed than elected officials, routine than fundamental issues, and legal arrangements than informal political influence.

To us, what was crucial to understanding politics was to grasp the importance of rival political views, including those between the rich and the poor, whites and blacks, and suburbanites and city dwellers, but also the deeper cultural conflict between those who wanted to do good for the city "as a whole" and those who wanted the city to benefit them as individuals. The former wanted efficiency, impartiality, honesty, nonpartisanship, planning, and strong executives; the latter wanted favors, personal support, and influential legislators who could help neighborhoods. This competition between these opposing cultural groups was, we argued, the most profound force shaping city life and could be used to understand why some cities had embraced a "reform" style of government and others had resisted it. We later developed this idea in studies of voting behavior and public opinion, distinguishing empiri-

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cally between what we came to call the "unitary" and the "individualist" ethos.

The book had a chapter on master planning, but in it we quickly admitted that very little of this went on in America. Real planners did something rather different: They gathered facts, drew up zoning ordinances, and oversaw the design of particular projects. This kind of "planning in the small" was often feasible, but "planning in the large"—designing a plan for the shape and growth of an entire city—was not. Indeed, small-scale planning often made large-scale planning impossible. Experienced planners had discovered that the decentralization of authority in the city meant that there was no way whereby experts could base a design on the general interest. And so the chapter was really not about master planning but about theorists who had argued that this kind of planning was desirable. The theorists were easily refuted, and so in this chapter, written by Banfield, his earlier fascination with planning was given its funeral.

By the early 1960s, Banfield had reached intellectual maturity. He now believed that planning, and any other strategy to organize and rationalize society on the basis of reason alone, was suspect. Politicians played a far more important and desirable role than experts, because they paid attention to cleavages of opinion and especially to those that reflected a fundamental disagreement about how government should be organized. The long and settled experience of a people that has been fortunate enough to live in a democratic society is the best test for what works.

Lower than the angels

The book that brought Banfield to public notice was *The Unheavenly City*, published in 1970. The title taken from a phrase used by Cotton Mather in 1710 when he urged Americans to join him in seeking out a "heavenly city" inhabited by an "innumerable company of angels, and by the spirits of just men." Real cities, Banfield said, were inhabited by real people, not angels, and by people who were just only some of the time.

The idea for the book grew out of a series of commentaries that he and Martin Meyerson had written for a Boston bank;

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the bank published them as educational advertisements. These commentaries were later gathered into a book entitled *Boston: The Job Ahead.* Banfield was never quite satisfied with the product; it was limited by its focus on Boston and was too narrow in its approach to urban reality. But like the ads, his new book, he wrote, was not so much a work of social science as a view of urban life informed by what other social scientists had learned.

The central problem of cities—central in the sense that it was both important and resistant to any feasible solution—was that city life was shaped by differing cultures, and in the view of its citizens the standards by which urban life should be judged were always rising faster than the real progress cities have made in meeting human needs. Cities were seen to be in a crisis because observers judged them by constantly rising standards. If people were to judge cities by a fixed standard, then by many measures—personal income, housing quality, and cultural opportunities—they would be seen to have done well. But even with a fixed standard, cities have not done so well in crime and scarcely much better with respect to education.

Crime and education have one thing in common: Much depends on what a possible criminal or an incoming student brings to the enterprise. And to understand that, one must investigate the culture of each, a culture that is the product of social class. To Banfield, class was a state of consciousness based on a person's attitude toward time. The longer a person's time-horizon, the greater his willingness to defer present pleasures for future benefits, the more convinced he is that his own behavior will determine what the future will bring, and so the higher his (or her) class position.

Banfield argued that social class, thus defined, is not the same as income or race. There are impoverished medical students who are upper class (they are studying hard for higher incomes that are years in the future), and there are self-indulgent sons of rich fathers who are lower class (they are spending their inherited wealth on immediate pleasures with little thought to the future). Similarly, there are upper, middle, and lower-class blacks just as there are upper, middle, and lower-class whites. Immigrants to the United States may ar-

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rive with nothing in their pockets; they will be poor, but their future, and that of their children, will depend heavily on how much they bet on the future. However, the proportion of people who are both rich and truly upper-class will be high; if it were not, few would be rich except by inheriting a fortune or hitting the jackpot. And there will also be a high correlation between being poor and being lower class; if there were not, the ranks of the poor would decline sharply as economic growth created even small opportunities for advancement. America has greatly rewarded people who were interested in the future. At one time, the cities were composed mostly of poorly paid workers; now they are mostly composed of well-paid members of the middle class.

This argument was the main reason why Banfield's book was so successful—going through 22 printings, selling tens of thousands of copies, and republished in a revised form in 1974—and why it was so hated. One scholar called it "patent racism" and another compared it to social Darwinism by attaching to it the label, "survival of the fattest." There were also many positive reviews, and some magazines published colloquia on the book. The reaction of almost every reviewer revolved around race and class. Banfield understood this reaction. To him, intellectuals were often paralyzed by their ideological commitments to good race relations or to narrowing the income gap, even though programs based on those commitments often did little to improve race relations or change economic prospects. Banfield's argument was a powerful denial of the efficacy of some commonplace programs (such as the minimum wage and compulsory high school) and many pet projects (such as the War on Poverty, the Great Society, and a domestic Marshall Plan).

The hostile critics ignored much of what Banfield wrote. His argument was cultural, not biological; it found a lower-class culture among every ethnic group and not just among African Americans; it never denied that progress was possible (indeed, it predicted that a significant part of the lower class would disappear as a result of economic growth, the declining birth rate, and the relentless spread of middle-class values). What the thesis did deny was that professional problem-solvers and their upper-middle-class allies were likely to make much of a difference.

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Art for the people

Following the political controversy over *The Unheavenly City*, Banfield decided it was time to strike out in a new direction, and so he entered into an agreement with the Twentieth Century Fund to write a book about public support of the arts. The Fund had been impressed by a 1972 essay Banfield had written on public libraries, in which he argued that they seemed to have lost a sense of purpose. These libraries were doing some things that they could not or should not do and neglecting other things that they ought to do. For example, they devoted much energy to helping light readers, even though this served no public purpose, and very little effort to serious readers despite the gains that (he assumed) would come from such an effort. The Fund probably supposed that the author would bring the same sense of higher purpose to art museums. If so, it was quite mistaken.

After much thought and reading, Banfield concluded in *The Democratic Muse*, published in 1984, that public support of art is undesirable. There is such a thing as the public interest, he believed; it has to do with what benefits citizens generally by meeting their need for what is right and just and for settling principles as to how social decisions ought to be made. (This unitary view of the public interest departed a bit, but I think only by way of emphasis, from his earlier individualistic view that stressed the satisfaction of human wants.) The public welfare, he wrote, was served by a tax-supported courthouse but not by a tax-supported statue in front of it. The courthouse administered justice; the statue conferred pleasure. It was not the task of government to confer pleasure unless one thinks (as some nineteenth-century writers did suppose) that art exists to elevate and refine public tastes. But by the 1970s scarcely any artist believed that; for them, art existed for its own sake or simply to shock the public.

Moreover, Banfield argued, public subsidies for art were economically irrational. They transferred wealth from poorer people to richer ones (since most museum patrons are relatively well-off), subsidized a self-interested art establishment, took the place of reasonable user charges that most people could easily pay, and allowed the government to define (by its grants) what constitutes art. (All of this was written before the

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National Endowment for the Arts had begun to give grants to many absurd or hard-to-defend "artists.") Banfield suggested that the public's interest in art would be better met by selling high-quality reproductions of paintings and statues so that everybody could enjoy art without having to travel to a big city to see the originals. His proposal was, of course, denounced by art critics, both conservative and liberal, and by virtually every art organization. It was curious, he responded, that his idea was said to have no merit, when the same critics endorsed televising opera performances (that is, making copies of the original) and selling recordings of music (some of which were poor reproductions of the composer's intent).

Neither a Straussian nor a libertarian

"I am a vintage Burkean," Banfield would later say. He was convinced that "society exists on the basis of habits and beliefs" that are at risk from the challenge of the "cold light of reason." One can sit down and try to think up better ways to do things, but "the more you think about [such ideas], the more problematic they become." We have deluded ourselves into thinking that people are reasonable, he added, but in fact human beings are governed more by passion than by reason.

This was a common view in the eighteenth century and of the men of that era whom he greatly admired—John Adams, David Hume, and Samuel Johnson. "All of society's problems are at bottom moral problems," Banfield once noted. They can often be managed, but only by discussion and even then the discussion is not on an entirely rational level. "When things work, it is always a bit of a mystery," he wrote. What was most remarkable is that there *is* order in society, especially in a world in which schooling the young had become so important. He valued education and devoted his life to it, but he always said that "thinking is an inherently dangerous business" because it tended to produce a society of moral relativists. In a 1983 essay he wrote that when one "encounters a grandmother who has been sucking eggs for many decades with conspicuous success, one ought to hesitate before presuming to instruct her in the theory of egg-sucking."

Banfield's political thought can be usefully compared to two of his former colleagues and friends at the University of

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Chicago, Leo Strauss and Milton Friedman. Banfield thought Strauss was a genius but never became a "Straussian." When Banfield left Chicago for Harvard, Strauss spoke at the faculty dinner at which Banfield was guest of honor. Strauss had tried in vain to interest him in natural law, arguing that since Banfield was a man of principle, and since natural law was merely the sum of principles on which honest men usually act, he must respect natural law. But Banfield would have none of it. "His innate impishness," Strauss said, "does not permit him to conceive of his actions as dictated by any law, natural or non-natural." He prefers, Strauss continued, "to trace the best in him to whim and mood." When Banfield bought the Vermont farm, it was whim and mood at work, but whim and mood that led to years of happy satisfaction.

After Strauss died in 1973, Banfield returned his compliments in a commemorative essay. He recalled having been in the first class Strauss taught at Chicago and witnessed the great scholar's difficulty in deciding whether to smoke in a room that had a "No Smoking" sign prominently displayed. Banfield responded by taking the sign down, an act that began their friendship. To Strauss, Banfield was a prudent man, high praise indeed from a profound student of Aristotle. The two men discovered that they both were critics of modernity, Strauss because modern men had wrongly concluded that they could dispense with the idea of virtue, Banfield because they had often become so preoccupied with a self-expression that was little different from crude hedonism. But neither Strauss nor Banfield ever suggested a philosophical or practical position by which any of the evils of modernity could be overcome. Neither thought a solution possible; after all, many of the greatest minds disagreed about the right course of action. But in the meantime both felt it important to be loyal to the best regime available, and to both that regime was the United States.

Nor was Banfield a libertarian. Though a great friend of Milton Friedman, without doubt the most important libertarian of our time, and though a great admirer of free markets for those things that could be profitably exchanged in markets, he recognized the limits of markets. In a review of Friedman's book *Capitalism and Freedom* in the conservative journal *National Review*, Banfield praised the book but held

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back from recommending it strongly to those readers who, he suspected, were too likely to accept all of Friedman's conclusions. Banfield did not believe that personal freedom was the highest human goal and hence did not believe that any market transaction, voluntarily entered into by free men, would necessarily produce the best outcome. The reason is simple: If freedom is the highest good, then there is no way of judging market transactions other than to say they were freely made. But merely because they were freely made does not make them good. If one man wants to buy a slave and another man agrees to be his slave in exchange for money, slavery would be good. But we know that slavery is bad, for it deprives one person of his humanity and separates him from the fruits of his own labor. People ought to value freedom but value other things as well, especially a "consensual order which permits reasonable discussion, the exercise of reason itself, and whatever substantive values the exercise of reason recommends."

Not by reflection but accident

My favorite passage from Banfield's writings is this one, penned in 1961 at a conference organized by Robert Goldwin. Banfield disliked conferences generally and only joined the American Political Science Association after being informed that he was about to be made their vice president. However, Goldwin's meetings, devoted to hard thinking by serious people about central political issues, appealed to him. In this essay, Banfield defended the American political party system against the many people who sought to end it.

> A political system is an accident. It is an accumulation of habits, customs, prejudices, and principles that have survived a long process of trial and error and of ceaseless response to changing circumstance. If the system works well on the whole, it is a lucky accident—the luckiest, indeed, that can befall a society, for all of the institutions of the society, and thus its entire character and that of the human types formed within it, depend ultimately upon the government and the political order.

Edward Banfield died peacefully on September 30, 1999. His doctors told his wife Laura that his death was not the result of any particular disease. His body had just stopped living.

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Moving out of public housing

HOWARD HUSOCK

IN 1935, two years before Franklin Roosevelt signed legislation that would bring large-scale public housing to the United States for the first time, social reformer Catherine Bauer made the case for government-owned housing. Bristling with contempt for the American private housing market, she wrote in her book *Modern Housing* that "the justling small builders and the front-foot lots and the miserable straggling suburbs and the ideology of individual Home Ownership must go.... Only governments can set up the new method of house production ... to replace the wasteful and obsolete chaos still prevailing." By 1950, public housing projects had risen in cities across the country. Their advocates in the National Housing Conference declared these projects a success, asserting that they had "given low-income families their first opportunity to live in a decent, healthy environment." And the benefits, they claimed, extended to cities as a whole: Public housing, by ameliorating the "social ills bred by slums [had] saved taxpayers vast costs for police,

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fire, health and crime protection."

Some 50 years later, after generations of Americans have chosen to move to those "miserable, straggling" suburbs and more than two-thirds live in privately owned homes, public housing is now seen quite differently. The Chicago Housing Authority has described its 38,000-plus apartments as "some of the worst housing in America ... a large stock of physically obsolete family housing plagued with crime and drugs." It is a great irony of public housing that it has proven to be no better than the slum housing it was designed to replace. Yet despite the widespread failure of the public housing system, many are still persuaded by the power of old arguments and continue to seek new ways to build better versions. Indeed, over the last decade, the federal government has spent some $4.5 billion on that task. The time has come to recognize that the fundamental assumptions behind the public housing movement were mistaken. Rather than seeking ways to salvage a utopian dream, we must recognize its failure and take the necessary steps to sell off public housing and eliminate the role of government.

The problems with public housing go far beyond the physical dilapidation of many housing projects. First, public housing has come to be dominated by, as well as to encourage the formation of low-income single-parent households, with all the social problems that such families bring. At the same time, because the land on which public housing stands is designated for a single, unchanging purpose, it creates what could be called a "frozen city," a poorhouse that stands in the way of the regeneration of cities. Far from benefiting cities as a whole, public housing projects preclude new uses of land and capital that could serve the larger population, including those in low-income communities.

The elimination of public housing is a process already partially, if unwittingly, begun by the federal government. The last decade has seen the demolition of almost 100,000 of the 1.3 million public housing units in the country. To date, there has been an assumption that they should be replaced by newer, more expensive versions of public housing. But the demolition program has in fact offered cities a unique opportunity to phase out public housing once and for all. Indeed, in some

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cities, elected officials are already asking that the projects simply be cleared away.

Incubator of social problems

The realities of public housing, as they exist today, were never envisioned by its original proponents. Early advocates imagined the projects as a way of providing affordable housing to working families. Substantial rents were to be charged, and this capital would provide the financial underpinnings of the local public housing authorities. Although financing construction was to be the responsibility of the government (through bonds whose debt service was paid by Washington), the approach to operations and maintenance was to approximate that of private apartment buildings.

But when the American construction industry began to build millions of new private homes and apartments after World War II, working families quickly abandoned public housing. Today, most two-income working families in America can afford to buy their own home. Since 1970, the National Association of Realtors has compiled what it calls a Housing Affordability Index, which compares median home prices and mortgage rates to family income. As of September 2001, it found that a household income of just $37,584 was sufficient to afford the median-priced home in the United States—not a house in Scarsdale or a co-op on the Upper West Side—but a modest house in an average neighborhood. It is therefore not surprising that in 1996 the Pew Research Center found that 87 percent of Americans were satisfied with their housing situation.

It is no coincidence that there are few married couples with children to be found anymore in public housing. Instead, buildings first conceived as the workingman's friend have become the redoubt of the elderly poor (who typically live in buildings reserved exclusively for them) and, increasingly, low-income single women and their children, who live in the "family developments." Department of Housing and Urban Development (HUD) data indicate that of the 1.06 million households living in public housing in 2001, only 6 percent were married families with children. Discounting those households headed by disabled or elderly persons, HUD estimates that 88 percent

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of all families in public housing are single-parent households.

Indeed, the implicit reason for public housing today is to meet the demand in housing for low-income, single-parent households. This demand is masked in well-established rhetoric alleging that the American economic system fails to provide adequate housing for the average citizen. The National Low Income Housing Coalition asserts that "most people who need access to affordable housing still do not obtain it," while at the same time noting that "most renters with severe problems were either single or households with children present." Many of the latter are presumably single as well.

But, we might ask, what's wrong with providing inexpensive apartments for low-income, single-parent households? First and foremost, providing such apartments encourages the formation of these households. Indeed, from the point of view of an 18-year-old teen mother with two children, public housing is an attractive option. It offers her the chance to have her own apartment, with room and privacy she would not otherwise have. HUD reports that 41,709 nonelderly, nondisabled single-parent households moved into public housing in 2001. Fifty-nine percent of these households were supporting a child under three years of age. Anything that abets the formation of single-parent families is destructive of children's prospects. The intuitive notion that children who grow up in single-parent families fare much worse than those in two-parent homes has been confirmed by a mass of social-science data over the past decade. Moreover, it has become apparent that concentrating these families in a single location far exacerbates their problems, contributing not only to the formation of more single-parent families but also to deprivation and dependency.

Today, the federal government has made public housing even more attractive than in the past. In contrast to cash public assistance, which has been limited to five years, subsidized housing comes with no time limits. The average term of residence in public housing is 7.7 years, and HUD reports that 26 percent of current public housing tenants have been in public housing for more than 10.5 years. The average length of stay in New York public housing is 17.7 years. In other words, public housing does not alleviate short-term hardship but traps the poor in a life of poverty and perpetual depen-

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dence. Such extended tenures also suggest that public housing today exacerbates, rather than eases, housing shortages in tight real estate markets. Common sense dictates that it takes more housing units to house a city's population when there are more households; as the number of single-headed households increases, so too does the need for more housing units.

A few communities are becoming aware of the fact that public housing invites its own demand and encourages a plethora of social ills. In Fall River, Massachusetts, an historic textile manufacturing center 50 miles southeast of Boston, Mayor Ed Lambert has asked the state legislature for permission to demolish the nine-acre Watuppa public housing project. This action was in part a result of a housing study that found that there was no shortage of inexpensive, private housing in the city. It was also becoming evident that the public housing projects were a magnet for troubled families from other locales who brought with them, in the words of the mayor, "more police calls, more special needs kids, more crime and more drugs."

Increasingly, cities are awakening to the physical problems of their aging projects. The dilapidation of public housing is closely related to the system's demographics. With their low average incomes, public housing residents simply cannot afford to pay rents sufficient to provide local housing authorities with the operating and maintenance funds they need. Instead, housing authorities must rely on federal grants, which, inevitably, vary with the times. Federal aid has often been insufficient to keep up with the problems found in 50-year-old buildings occupied by scores of minimally supervised youth. A 1992 national commission on "severely distressed" public housing found that dealing with the backlog of maintenance and modernization in the public housing system would require a sum of $29 billion. If the federal government has not been reliable in providing operating assistance (which will nonetheless total $3.4 billion in the fiscal year 2002, along with $2.8 billion in grants for capital improvements), neither have local public housing authorities delegated these funds wisely. Local housing authorities in Boston, Philadelphia, and the District of Columbia have all been in court-ordered receivership in the past two decades because of management deficiencies. In

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Boston, for instance, more than 600 of 12,000 apartments stand vacant for over six months on average, awaiting cleaning and maintenance.

The frozen city

Yet even if public housing projects had been well maintained over time, they would nonetheless pose an additional serious problem for cities: the "frozen city." Consider the Ingersoll-Whitman Houses in the Fort Greene section of Brooklyn. The 3,000-plus units were dedicated in 1941 as the Fort Greene Houses by Governor Herbert Lehman. The location was chosen, in part, because of its proximity to the Brooklyn Navy Yard, where residents, it was thought, would likely be employed. The Navy Yard has long since ceased its military operation. Today, the recycled facility is home to a wide array of businesses. In addition to blue-collar industries there are now architecture and engineering firms, an art dealer, a medical laboratory, and an audio-video production house. Employees of these businesses might like to move into a nearby neighborhood and fix up old houses or build new ones. By doing so they would encourage the arrival of new retailers and increase overall investment in the neighborhood. None of this, however, can happen in the neighborhood of the huge Ingersoll-Whitman complex. The use of the property has been fixed, even as times change.

The problem of the frozen city extends beyond the fate of specific properties. To survive and prosper, cities must be able to adapt to changing times. Land and buildings devoted to one purpose one year must be free to be used for new, unpredicted purposes the next. One cannot be certain which buildings or properties, however long overlooked, will suddenly acquire great value. The permanent allocation of large tracts of land for public housing precludes the creative recycling of land that must occur if economic revitalization of neighborhoods and cities is to take place. It is no surprise that public housing was a fixture of life in the former Soviet Union and eastern block countries, with their centrally run, moribund economies.

The frozen city phenomenon presents a particularly difficult problem for New York City, which operates by far the

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largest public housing system in the United States. (The New York City Housing Authority is the largest residential landlord in the nation.) When first built, the projects in East Harlem were described as "the world's greatest concentration of public housing.... There will be 60,000 persons living in 13 public housing projects within a two-square mile area from 96th Street to 135th Street, between Fifth Avenue and the East River." Today New York City's 346 public housing developments occupy more than four square miles of real estate—enough land on which to build 165 World Trade Centers. Its 189,000 apartments and 460,000 residents are a city within a city, with a population larger than that of either Buffalo or Rochester. In some parts of New York—such as East Harlem and the Lower East Side—their concentration is so great that they have effectively become permanent ghettoes, cut off from the rest of the city.

These latter-day poorhouses cast a long shadow over the life of the city. With their concentration of crime and drugs, they are like radiating death stars that kill off existing city life and abort any chance for new life in the vicinity. In East Harlem, a wall of housing projects (named for former presidents of the United States) has inhibited the resurgence of the neighborhood, even as the Manhattan neighborhoods below 96th Street have become extremely expensive. Real estate investors who have tried to renovate and rent the attractive brownstones of East Harlem complain that gunfights start in the projects and spread to the surrounding neighborhood, making it difficult to charge more than $800 in monthly rent, perhaps a third of what is charged 20 blocks south.

New York City is not an isolated example. The precipitous decline of the Rockaway Beach waterfront area in Oregon began after the erection of large housing projects there. Chicago's booming downtown halts abruptly at a corridor of public housing projects named for a previous era's progressives: Harold Ickes, Ida Welles, Robert Taylor. The energy of downtown Chicago gives way to acres of vacant lots, since no one wants to build or live near the projects. In Buffalo, restoration of the Lake Erie waterfront is encumbered by the hulking, fortress-like Marine Drive housing project. Efforts to operate upscale waterfront restaurants nearby have failed. In

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Boston, the commercial resurgence of the city's South End, spurred by renovations of the neighborhood's townhouses and carriage parks, grinds to a halt as one approaches the Cathedral housing project. On one block there are the lively bars and restaurants of resurgent neighborhoods; on the next there are used furniture stores and vacant storefronts.

Some city mayors have recognized the problem of the frozen city. In New Britain, Connecticut, Mayor Lucian Pawlak has called for the demolition of the 62-acre Pinnacle Heights housing project, in large part because the site offers direct access to Interstate 84 and is thus considered one of the city's prime locations for commercial development. "Right now we've got 14 vacant buildings that run right along the highway at Pinnacle. It presents an opportunity to convert some of the vacant buildings into something productive."

Misguided reform

Such proposals are, to date, exceptions. As it has become clear that public housing combines a concentration of social problems with a massive maintenance backlog, efforts have been made on the federal level not to end but to reform public housing. These misguided reforms have been pushed by both Republicans and Democrats alike.

Jack Kemp created the HOPE program (Homeownership and Opportunity for People Everywhere) as secretary of HUD during the first Bush administration. The program was designed to sell off public housing to its residents, who would then take responsibility for its management and upkeep. But the renovation of Kemp's showcase Kenilworth-Parkside project in the District of Columbia's Anacostia section turned out to be expensive (as much as $130,000 per apartment) and slow. Even beyond these problems, it is worth asking if the concept of resident ownership is a realistic one. As Stephen Kinnaird has written in the *Yale Law Journal*, the HOPE program "promotes an inefficient form of ownership to households unable to bear the inherent investment costs and risks or manage the housing stock effectively."

Former New York Congressman Rick Lazio, a Republican like Kemp, promoted another scheme for public housing reform. Lazio's "Quality Work and Responsibility Act" sought to

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return public housing to the halcyon days when it provided homes for large numbers of working families. Lazio's legislation was based on the idea that working-class families would serve as positive role models for a population heavily dependent on public assistance. But the truth is that the majority of working families don't need public housing. In fact, it is just as plausible—if not more so—that a small number of working families in a sea of dependency and illegitimacy might themselves be harmed by such a social experiment. One New York City housing official recalls that in the period when housing projects were coming to be dominated by single-parent families, it became impossible to place two-parent working families in them. In too many cases, the large number of young single women would tempt married men into adulterous relationships, undermining their marriages.

Yet the role-model idea remains popular among public housing reformers. It is the cornerstone of the HOPE VI program, one of the most ambitious and expensive public housing reform initiatives yet undertaken—$4.5 billion has been appropriated to date for the program. The HOPE VI program flowered during Andrew Cuomo's tenure as secretary of HUD in the Clinton administration. Its goal was the replacement of 100,000 traditional public housing projects with a mix of public housing units, subsidized apartments, and subsidized townhouses. They were to be occupied by residents of different socioeconomic backgrounds: public housing for very low-income households and subsidized apartments and townhouses for those more financially independent.

The investment in these experiments has been substantial. In Boston's Mission Main project—where 1,000 apartments in 38 buildings were replaced by 535 units in townhouses—the cost has been $225,000 per unit. In a 300-unit HOPE VI project in Oakland, public investment totaled $290,000 per structure. The biggest investment in any one city has been in Chicago, where $427 million in HUD grants will provide for the demolition of 4,500 public housing apartments and the construction of 1,674 "public and mixed-income housing units." But as with public housing historically, there will be no time limit on residency. And, regardless of such improvements, the projects will still preclude other uses for these sites. When

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one bears in mind that most two-parent, working families don't need subsidized housing, it becomes clear that such households—lured by the low price of new subsidized housing—are being used as guinea pigs in a dubious social experiment.

But HOPE VI does have one key virtue: It is demolishing more public housing units than it is erecting. In addition, thousands of long-time public housing tenants have been "vouchered out"—given temporary rent vouchers and encouraged to find private housing with the assistance of social-service programs. Such an approach—especially if coupled with time limits—could serve as the linchpin of a policy to phase out public housing for all but the elderly.

Exit strategies

Some public housing projects may prove to be both in good enough condition and in good enough neighborhoods that they could be sold to a private buyer. For others, low-interest loans for repairs could lay the groundwork for successful private operation. We cannot really be sure how many public housing structures have the potential to make such a transition, since surveys of public housing have typically looked for those buildings in distress, not those which might be saleable. In all probability, those for which a market exists will be relatively small, low-rise buildings—like those in the outer boroughs of New York City that are already managed by private firms under contract with the city housing authority. The sale of such buildings could create a fund that would pay the rent of the current tenants during the transition period—after which the apartments would simply be rented on the open market. Alternatively, existing tenants could be allowed to pay the same rent for a fixed period, with that amount supplemented by a limited-time federal housing voucher.

A time limit is crucial. Tenants should be given a limited period of time in which they can prepare for change—either to move elsewhere or to arrange to pay the market rent on their own. This is by no means a far-fetched scenario. In Charlotte, North Carolina, public housing tenants are eligible for new, HOPE VI units only if they agree to a five-year time limit.

Even after they are sold, it is not likely that such former

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public housing buildings will command high rents. Instead, they will likely take their place among other modest, blue-collar apartment buildings. Yet even if new owners continue to rent to relatively poor tenants—as well they might—it is by no means inevitable that the buildings will resemble today's troubled public housing projects. William Higgins, a former New York state housing official, now a property management consultant, observes that "management of public housing and low-income private housing are the same field. You have to deal with multi-problem families, drugs, socio-economic problems." But because private owners, says Higgins, are more likely to exercise control over the selection of tenants, the private housing market can make for better living conditions.

Other public housing developments will prove to be more difficult to privatize—for example, those which stand on valuable property but are themselves in extremely poor condition. Their sites may in fact be worth more vacant than with the buildings. Such buildings would have to be phased out and their households placed elsewhere during a transition period. This would likely mean that some public housing projects—the least attractive ones to developers—would continue to operate. In this situation, the proceeds of land sale could provide an endowment to support the continued operation of remaining buildings, while providing funds for the issuance of temporary housing vouchers to those households in transition.

Finally, there are public housing projects and sites that private buyers will have no interest in. These could become, in effect, extensions of cities' public shelter systems—that is, short-term housing for families facing emergencies or homelessness. There is, however, no reason that such shelters need to be run by public housing authorities. Instead, cities could contract with nonprofit social-service or faith-based organizations. Such shelters would, in effect, be a new version of the nineteenth-century poorhouse, a place where the poor could stay for a limited period of time.

Essential to the transformation of public housing is the adoption of a time limit for all new public housing tenants. Normalizing public housing real estate will be far easier if those living in the projects do not have an expectation of lifetime tenure. At the same time, adopting a time limit would

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bring housing policy in line with welfare reform and its time-limited approach to public assistance. Corresponding reforms in public housing, even if only for new tenants, could begin to have significant effects relatively quickly.

In the original 1937 congressional debate on public housing legislation, Senator Robert Wagner of New York promoted the idea as a way of aiding those "who live in unsafe and unhealthful conditions which are detrimental to morals, to health and also to safety." This is in fact an apt description of the conditions that exist in public housing today. The results of this failed social experiment have long been clear and the time long past to call it off.

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Souls without longing

ROBERT C. BARTLETT

THERE is a malaise spreading among America's college and university students, one that extends into the uppermost reaches of their hearts and minds, robbing them of delights at the moment they seem poised to enjoy them. This malaise leaves students with little direction or lasting desire and restricts their capacity to conceive of a noble and rewarding life; it encourages their pursuit of artificial and extreme joys that somehow always yield to lassitude or disappointment. The direction they should find on campus proves to be as elusive and evanescent as so much else in their lives: Universities have by and large forgotten the Socratic exhortation to "Know Thyself" that must guide an education worthy of the name. As a result, students are ill-equipped to know very much at all, least of all about themselves.

I began to detect this malaise in what might seem to be small things—in the narrowness of students' frame of reference or field of vision; in the pettiness of their daily concerns; in the tepid character of their admiration and contempt, their

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likes and dislikes; in the mediocrity of their ambitions. These extraordinary students, who can dream of absolutely anything and attain almost everything, are truly passionate about almost nothing. They expect to fall into an acceptable profession—medicine, law, accountancy, "whatever"—and to stumble across an acceptable pastime—golf, watching television, stamp collecting, "whatever." Much is made of the hormones that course through veins of teenagers, but I am more often struck by the timidity of their concerns and their placidity in regard to almost all things. The world could be their oyster, but they tend to stare back at it, pearls and all—and yawn. What is at work here?

My own experiences with students, first at a large public university, then at a small liberal arts college in the south, now at a prominent private university, have led me to a tentative conclusion: The malaise in question is a fundamentally new and especially virulent strain of boredom. Before students can begin to find their way in college, they must first become aware of this new malady of the soul. What follows is nothing more than a preliminary diagnosis.

On "boredom"

The word "boredom" turns out to have an interesting history. Its earliest recorded use is recent—the latter half of the eighteenth century—and the relevant authorities disagree as to its origin. Perhaps it is an extension of the verb "to bore," meaning to drill into something, thus leaving it empty or hollowed out. Then again it may come from the French *bourrer*, meaning approximately the opposite, "to stuff, to fill, to cram," which in turn suggests the discomfort of satiety. Turning back to two principal sources of English, to ancient Greek and Latin, one discovers how difficult it is to translate "boredom" accurately into either. If the Greek *alus* can be properly rendered as "boredom" (as distinguished from its more usual meanings of "agitation," "distress," or "fretfulness"), such usage is exceedingly rare. As for the Latin *acedia* and *melancholia*, they most closely approach "idleness" and "sadness" respectively. This philological puzzle suggests the intriguing possibility that the Greeks and Romans lacked the vocabulary to ex-

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press this experience because they lacked the experience itself. So argued Chateaubriand in *The Genius of Christianity* (1802), for he contended that the grand politics of antiquity left no room for the *ennui du coeur* known in his time, a "state of soul that ... has not yet been well observed." Could it be that the condition denoted by "boredom" is a relatively new malady that has been in the world only a short time and for which we have had to invent a new term?

A glance at the French equivalent of boredom, *ennui*—a word that has also entered untranslated into English—suggests that this is so. According to the *Robert* dictionary, a standard authority on the French language, the earliest of the word's four meanings was the torment or suffering caused especially by the death of loved ones. But this sense had vanished by the eighteenth century (except in poetry) and was replaced by *ennui* understood as those "burdens" or "troubles" caused especially by the weakening of one's senses—the *ennuis* of old age, for example. There then came *ennui* in the more common sense, that of dissatisfaction arising from simple idleness or inactivity. But in the course of the nineteenth century, the fourth and final meaning arose: *ennui* understood as the "vague melancholy" or "moral lassitude" that "causes one to take no interest in or pleasure from anything." Gustave Flaubert, perhaps the greatest poet of modern *ennui*, described it in a letter of June 7, 1844:

> Do you know of boredom [*ennui*]? Not that common, banal boredom that stems from idleness or illness, but that modern boredom that gnaws away at man's guts and makes of an intelligent being a walking shadow, a thinking ghost. Ah! I feel for you, if that leprosy is known to you. You sometimes think yourself cured of it; but one fine day you wake up suffering from it more than ever. Do you know those colored bits of glass that adorn the kiosks of retired hosiers? You see the landscape in red, in blue, in yellow. Boredom is the same. The most beautiful things, seen through it, take on its tint and reflect its sadness.

The boredom described here is not (or not only) the garden-variety boredom that takes hold when we are adrift without the rudder of desire or the anchor of demands, when we have finished with both our serious work and our rejuvenating play and find ourselves staring blankly in the direction of the

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television. It is more profound than that, and more troubling too; it is a soul-sapping emptiness or absence of longing that is sometimes kept at bay but never fully banished.

The demise of politics

The first important cause of boredom among my students is the decline of politics, of community, as a vital presence in their lives. They arrive on campus with meaningful connections only to their immediate families, and they will return to them as visitors. Teams, clubs, and fraternities and sororities certainly draw students out; but these occupy more their time than their hearts, and the connections thus formed typically dissolve on graduation day. If the ancient Greeks and Romans—those "communitarians" par excellence—were guided and ennobled by asking only what they could do for their country, American students today tend not to ask and aren't often told what they could do for theirs. It is no accident that films like *Braveheart*, *Gladiator*, and *Black Hawk Down* electrify many students, for in them they glimpse a strange, evidently grander and nobler world in which people sacrifice their individual goods on the altar of the common good.

Such heady self-forgetting is momentary, an aspect of entertainment, and Tocqueville's rather nasty remark about democratic citizens can be applied with greater justification to students: They are habitually occupied in contemplating a very petty object, namely themselves. No wonder, then, that political life occurs somewhere beyond the scope of their concerns. I cannot count the number of times I have met students who, upon learning that I am a professor of political science, smile wanly but aver that they are "not political"; it is not with cynicism that many college students greet political questions, but with bored indifference. Though some will express admiration for what they believe to have been the "commitment" of students in the 1960s, very few feel it themselves; and such spasms of interest in this or that political cause as do occur tend to result in measures that are half-hearted, not to say half-baked. I once saw a rather blasé fellow seated under a hand-lettered banner for Amnesty International that read, "Help Free Prisoners of Consciousness."

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My students' indifference to politics is not without cause, of course. American politics often is dull. From the highest perspective, if the statesmen of the American Founding earned "deathless names" for themselves, we as their distant epigones must understand, as already the young Abraham Lincoln did, that "this field of glory is harvested, and the crop is already appropriated." In the absence of so grave a national crisis as the one Lincoln himself was to face—a crisis no responsible citizen ought ever to wish for—the young people today who belong "to the family of the lion or the tribe of the eagle" will not sate their "ruling passion" merely by maintaining the edifice built by others. But whereas Lincoln feared the rise of a new "Alexander, a Caesar, a Napoleon," who would overturn the established democratic order, we have rather to fear that, with the greatest fields of glory closed to them, the most gifted students will become ever more indifferent to that order and so refuse to enter even such lists as are available to them. Thankfully, a lesser but infinitely more beneficial ambition still burns in the bellies of a few students, who would, as Lincoln remarked in his "Lyceum Address," "aspire to nothing beyond a seat in Congress, a gubernatorial or a presidential chair."

It is of course true that the framers of the Constitution intended American politics to be unexciting. Gridlock caused by the separation of powers, the rule of law, and orderly transitions of power all contribute to a remarkably imperturbable government. The highest task of that government, moreover, is to protect the freedom each citizen enjoys to pursue a happiness usually conceived of in strictly private—i.e., nonpolitical—terms. As a result, our politics isn't all that political and lacks the rough-and-tumble of political life unadulterated and unrestrained. Health care, Social Security, and the economy are our most controversial political questions, but each concerns ultimately our private, even our bodily, well-being. The policy wonk, not the visionary leader, is the man of the hour. To be sure, this apolitical politics is the product of sober moderation and painstaking deliberation, and students should be taught to see it as such. But moderation not typically being a virtue much esteemed by the young, the fact remains that American politics—prudent, measured, and decent—leaves most students

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cold. Whether the advent of terrorism to the United States will fundamentally change students, by raising them from their insular indifference to public life, remains unclear.

Post-religion

Another, more controversial cause of students' *ennui* is the absence of religion in their lives, a causal connection made famous by Pascal: Without knowledge of or concern for God, human beings vacillate between fits of diversion, which keep them from thinking of their fundamental condition, and enervating boredom, which reminds them of it. To be sure, the United States is still a more religious nation than any in western Europe, but the much-cited polls on the subject can't be the last word. An affirmative response to the question "Do you believe in God?" gives absolutely no indication of the place such belief actually occupies in the respondent's life, nor of what (if anything) the God in question demands.

But, in any case, I am speaking of college campuses, and it is no secret that professors, at least, tend to be much less religious than the populace at large. My students, for their part, have rarely been taught by their parents to think of religion as central to their lives. If in the nineteenth century the youth were habitually told to "become priests," as Alfred de Musset reports in his classic *The Confession of a Child of the Century*, such parental advice would be unthinkable now. (The most important exception to this is the concern for religion shown by some first-generation immigrants, but how the faith of their children changes under the influence of American mores is a tale often told.) Whatever their background, students will be greeted on campus by an indifference to religion that occasionally gives way to hostility or ridicule. There is of course well-intentioned lip service to "spirituality"—that convenient catch-all for any fellow feeling—but it doesn't count for much when students need it most: Because it encompasses all religious convictions, "spirituality" drains away all that is particular to and most profound in each. And so my students are more inclined to look to modern psychology and pharmacology than to religious faith for help in navigating a crisis. Sensing this, and not wanting to be behind the

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times, religious leaders on campus have become adept at giving advice that studiously avoids mention of God, still less "sin" or "eternal damnation."

The burdens of progress

But if few of my students have religious conviction to guide them, they do cling with something like religious fervor to its secular substitute, the belief in progress. Not God but History is in charge, and Bill Clinton's happy campaign song struck a chord with them: "Don't stop thinking about tomorrow 'cause it'll be better than before." Things will just "work out for the best," as my students put it. This popularized version of Hegelian philosophy does, of course, have some support in their lives. They are the principal beneficiaries of the world's most successful experiment in free markets and of the truly awesome march of modern science. These forces have combined to create a technology whose mastery of the natural world confirms for them the superiority of their age. In politics too it would seem that they are incomparably blessed, for political history appears to them to be the history of a series of more or less foolish errors leading up to the discovery of (our) liberal democracy. The temptation to see ourselves as standing at the "end of history" is great indeed.

Whatever other questions one might raise about this belief, it takes a toll on students. For to be convinced of the progressive character of human life is to be convinced of the superiority of the present to the past: When the achievements of another era are considered by definition deficient in comparison with what we can do here and now, they shrink accordingly in importance. Thus the belief in progress saps the only serious incentive to study the past—to learn from it how to live here and now—and history becomes boring. Unburdened by knowledge of the past, my students are crippled by an amazingly constricted frame of reference. They know nothing of Pericles and little of Churchill and so cannot compare the utterances of our democratic statesmen with those of the ancient Athenians or even of modern British leaders. Pyrrhic victories, Quixotic undertakings, and Socratic irony are lost on them. They wouldn't recognize a Shylock or a Jezebel if they

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stumbled over one, and if some day they meet their Waterloo, it will all be over before they know what hits them.

The belief in progress can also suppress student striving. For some undergraduates the focus is less on all the neat things left to do, at what they take to be this late date in history, than on all the neat things that have already been done—by somebody else. Gone are the virgin jungles and untrodden polar caps that enticed the adventurous spirits of yesterday. Indeed, the highest mountain peaks of story and song can now be routinely visited by means of prepackaged adventure tours, which provide only vicarious thrills: Mount Everest as an extravagant amusement park. As for the exploration of outer space, the chief result of the space program has been to make space travel routine and therefore—you guessed it—boring. The space shuttle in particular has become a sophisticated flying truck, and how many college students dream of becoming truck drivers?

Finally, the doctrine of progress begins to rob even the present of its grandeur. Today may be better than yesterday, but some tomorrow will always outstrip any today. Most of the gadgets and inventions we so pride ourselves on will be forgotten eventually, the MP-3s and space shuttles of today becoming the 78s and horse-drawn buggies of yesteryear. Our greatness too will be, like all human things, of remarkably fleeting duration. But, in the end, this means that ours is a cut-rate, low-rent greatness, and who can be profoundly moved by that? The prevalence of the belief in progress among students causes both the past and the present to shrink before the daunting prospect of an awesome and unimagined future—to which we ourselves are but prelude. Some awareness of the implications of the doctrine of progress is beginning to seep into the consciousness of students, with all the deadening consequences one might expect.

Nihilism's long shadow

More complicated and more troubling is the influence of nihilism—of the philosophy of "nothingism" first publicized in Turgenev's *Fathers and Sons* and made notorious in the writings of Friedrich Nietzsche. Nihilism holds, in brief, that all

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so-called objective truths, and in particular all judgments of right and wrong, have in the modern era finally been revealed to be what they have always been, namely man-made creations of the human will. They are not grounded in Nature or God or Truth and can find no support in anything outside of, or higher than, our own will.

Achilles, for example, believed that Zeus really existed, that what the gods declared to be just was just unqualifiedly, and that the causes he lived and died for were truly noble and hence truly worth living and dying for. We moderns, by contrast, believe that all those goals were merely historically conditioned or relative to the time in which Achilles lived. Unbeknownst to Achilles, the foundation of his life was a myth, a lie; where he believed there to be something, we know there to be "nothing." More important, we have applied this insight to our own lives: What we wish to believe is true with a capital "T" will, like all such beliefs, fall away in time and so be revealed as an evanescent act of the will, not an insight into the way the world "really" is. But this means that we cannot quite believe in our beliefs any more. Adrift without rudder or compass, we have no polestar above and only a bottomless abyss below. All this is implied by Nietzsche's proclamation that "God is dead," for "God" is just shorthand for all the convictions a people holds about the highest things.

The change nihilism has wrought in our thinking is revealed most obviously in the language we choose when speaking about what is most important to us. If Thomas Jefferson were to write the Declaration of Independence today, he couldn't speak of "self-evident truths," "Nature," or "God." "We own these values as expressive of our preferences and commitments, although we celebrate the right of King George to express his own value-commitments and pursue his own life style...." This might make a self-help guru misty eyed, but it would have been unintelligible to the American Founders, for whom "value" meant the worth of something (the value of gold, for example) and was not a substitute for "truth" or "justice." Conservatives as much as liberals now speak habitually of "values," as in "family values." Yet, as Allan Bloom noted in *The Closing of the American Mind*, the language of values comes straight from Nietzsche, and all values are by

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definition relative—without support in anything other than our commitment to them.

The influence of Nietzsche is easy to spot on college campuses. It informs entire departments and dictates new methodologies—postmodernism being the uneasy marriage of Nietzschean nihilism and a far-Left cultural agenda. But Nietzsche's reach extends to the most unexpected places. I taught for several years in a "Great Books" program at a religiously affiliated and generally quite traditional liberal arts college in the south. From the inception of that program, just after World War II, until the mid 1980s, it was called simply "Man"—in the old-fashioned sense of "mankind." But since this seemed to exclude women, the decision was made to change the title to "The Search for Values in the Light of Western History and Religion." The search for values: not, or not necessarily, a search for *the* truth or for *the* best way of life, but for those strange animals called "values." But to begin by searching for values, rather than the truth, prejudges the case against the very existence of the latter. At most one could say that the truth is that there is only an endless series of values, each "relative" to the culture or epoch in which it is found. My students too speak this language, oblivious of its source. "I don't want to judge anybody's values" and "Well, those are my values!" are the refrains I hear whenever a student wishes to dodge thinking about a fundamental question. But to speak in this way is already to live within the embrace or stranglehold of a kind of nihilism.

The popularization of Nietzsche's thought in this country is but the last of the developments resulting in a generation of young people who can strive for greatness only with difficulty because they can conceive of greatness only with difficulty. The very idea of greatness presupposes a hierarchy of goals—the high, the middling, and the low. It presupposes a rank order of human ends and human striving. Yet students are solemnly taught to believe, without any investigation of the matter, that all ways of life ("life styles") are of equal worth, just as they are taught to believe, also without investigation, that there can be no answer to the question of what is the best way of life and hence no fulfillment of the specifically

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human nature. These are our dogmas, not our insights.

American dream, part II

The only official or overt guidance young people tend to receive in answering the question of how to live—a question that a university education should help equip them to answer—amounts to this: Be tolerant. The injunction to be tolerant is decisive in determining the moral mood of students, but it is not at all helpful in specifying that to which they should dedicate their lives. On this latter question, students are supplied more with platitudes than serious direction: Be all you can be, follow your dreams, grab the big brass ring. When students do reflect on the kind of lives they might lead, they think solely of their careers—that is, how they will make money. In devoting a large portion of our lives to money-making, we submit to the yoke of necessity. But how we choose to use the precious hours not devoted to this pursuit says infinitely more about us as citizens and human beings than does our occupation.

If it is not surprising that students first conceive of their lives in terms of earning a living, it is disappointing that, for all our talk of diversity and individuality, of freedom and opportunity, the career options that college students conceive of are uniformity itself: medical school for the scientific types, law school for just about everybody else. Beneath the blank canvas upon which each of us may draw a life, there lies a clear pattern that students diligently and dutifully trace. To be sure, these careers are perfectly respectable. Yet it seems unlikely that all of the very many who enter medicine and law are truly best suited to those professions or will find their fulfillment therein. And because earning a good living is often the only clear principle guiding undergraduates in their studies, they are understandably frustrated or baffled by what they are offered in college: Never intended to deliver technical or vocational training, the university's attempts to do so (e.g., "service learning") usually embarrass all concerned. As for such traditional fare as Jane Austen or theoretical physics or ancient Greek—what have they to do with landing a good job? Not much, as my students know. What they do not know is

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that these studies may have everything to do with their deepest, if not yet fully conscious, desires—to live not only comfortably but well, to lead lives of noble aspiration and admirable accomplishment. Their education should connect this desire to the serious study of all things human, not least in order to expand students' conception of the possibilities of human greatness.

As students' conception of greatness is narrow and impoverished, so too is the manner in which they judge of themselves and others. Indeed, the standard by which they do so in practice is often material wealth. I have never heard a student say anything so crude as that money equals goodness, but very many of them, like newfangled Calvinists, think it a clear sign. But if at the age of 20 you are already driving a nifty sports car, if the beachfront condo and the boat and the contents of the best malls are already at your disposal, there is no urgent incentive to strive for anything, according to the standard you yourself take most seriously. Many of my students, the children or grandchildren of those who have realized the American Dream, find themselves absolutely stumped as to what might be worth dreaming of here and now. Some are willing to have a go at the American Dream, Part II, by trying to beat their parents at their own game—to live in a still larger house, to drive an even faster car, and so on. But to their credit, many sense with greater or lesser acuity the emptiness of such striving. Equipped from the beginning with a defective standard of excellence, and having from early on many indications of already having met it, my students do not typically burn with a passion to be or to do anything. They are, in a word, bored.

Filling the void

Nature will out, however, and the burgeoning nature of youth not least. The vast energies of soul that might be directed toward worthier or more ennobling ends must still be vented somehow. To fill the time on their hands and the void in their lives, students often turn to questionable and even dangerous activities.

The young have always been attracted to risk-taking and outrageousness. Blithely free of the fear of death, their own

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mortality being an entirely unsubstantiated rumor, the young are eager to test their capacities. Better still if those tests elicit gasps of horror from their elders, from whose shadow they are striving to emerge. But now, thanks to technology, my students have before them an array of options that their predecessors could not have dreamed of: bungee jumping, skydiving, rollerblading and skateboarding, snowboarding and parasailing—all at breakneck speeds. Entire industries have sprouted up to cater to these activities, trying to give each a fleeting "cool." They have also helped to concoct a notion of "alienation" said to typify "Generation X" (a label I have never heard a student use), and prescribed a solution: the purchase of the correct clothing, soda, or athletic gear. Only in America could "alienation"—the Marxist term meant to describe the relation of the worker to the products of his labor under the tyranny of capitalism—become a business slogan to entice adolescents. As silly as all this is, the extremeness of "extreme sports" points to a problem: Ever more outlandish activities are now needed just to occupy or titillate the young. If Huck Finn was content to drift lazily down the Mississippi, his twenty-first century counterpart needs to jet ski across it.

But by far the most troubling response to the fundamental boredom of the soul among students is the use of drugs—the skyrocketing use of prescription drugs to be sure (Ritalin, Prozac), but also of illicit drugs, among them cocaine, Ecstasy, and marijuana. The first and most massive attraction to these drugs is the giddy numbness, the anesthetic quality they bring to the user. But this means that the user's euphoria can never be separated from—it is only the clearest indicator of—the demons that lurk within, demons that such numbness helps tame but only for a time.

Why are students tempted to anesthetize themselves? There is more at work here than the desire to occupy the mind with *something*, to find a pharmaceutical counterpart to watching television programs or prowling the malls. This deeper problem is indicated by the destructiveness of drug use, which, far from being unknown to students, is part of what tempts them. Being fundamentally adrift, being neither deeply moved nor profoundly elated by anything very lasting, some students blame themselves for their plight and even despise themselves for it.

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Drugs are a salve for these self-inflicted wounds. They help to deaden the pain caused by self-contempt; but also, because of the damage they do, drugs are a self-inflicted and apparently condign punishment that brings with it the purgative satisfaction of justice done.

The majority of students, of course, do not develop serious drug problems, however widespread experimentation may be, or become bungee-jumping enthusiasts. But stripped of the satisfactions that politics supplies, being without confidence in either God or reason, and clinging to the enervating doctrine of progress, many of my students are filled with the same uncertainties and self-doubts. What these young people long for unawares is an education deserving of the name.

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Commanding the commanders

JAY WINIK

A SNAPSHOT in time: One evening, early in the Civil War, Abraham Lincoln and his secretary of state, William Seward, called upon the Union General-in-Chief, George McClellan, at his house. McClellan was out, so they waited. When he returned, the general flatly refused to see the president, strolling past the parlor where he sat, and going upstairs to bed. Lincoln's response? Not anticipating such an insult, the president continued to sit there, in that parlor, in near silence, for more than an hour. Unthinkable as it is to us today, he never reprimanded McClellan.

But the parlor incident was only the beginning of his troubles. More often than not, Lincoln seemed downright paralyzed about his reluctant general: He believed McClellan a brilliant organizer who could make superb preparations for a titanic struggle, but he also worried that McClellan became "nervous and oppressed" when battle neared, fabricating excuse after excuse for not fighting. What to do? Lincoln consulted his Cabinet. The Cabinet was not so restrained: McClellan's behavior, they said, was "imbecilic," and they lectured the president to "command the commanders."

Command the commanders? Not yet. The next year, when McClellan simply refused to attack the Confederates, Lincoln's response was again muted. For his part, Seward was positively enraged—furious that Lincoln should leave an "utter incompetent" in command of the finest Northern army. Lincoln tepidly responded: "I did not feel disposed to take responsibility of overruling him."

Others thought differently. When the barons on Capitol Hill, led by Senator Ben Wade, openly clamored for McClellan's head, Lincoln asked, almost feebly, "If I remove McClellan, whom shall I put in command?"

"Well, *anybody*!" Wade said.

"Well, anybody will do for you, " Lincoln said, "but not for

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me. I must have *somebody*." This was 1862—the worst was still to come.

Whatever else may be said, Lincoln made his share of mistakes, and history should not obscure his patchy record—often erased by the brilliant final year of the war. Indeed, never before had a president had so much arrayed against him—or been so ill-prepared for such a momentous conflict. Members of his own Cabinet openly derided him behind his back: Stanton called him "the original baboon" and a "western hick"; his first attorney general called him "unexceptional"; one of his own generals, Joseph Hooker, called him a "played out imbecile." And why shouldn't they have said this?

Until his surprising election as president, Lincoln was an obscure legislator, an equally obscure one-term congressman, and a failure in his bid for U.S. Senate. Everything about his career smacked of the persistent efforts of a political hack, a hanger-on, a man who didn't know when to quit. He had not a shred of executive experience, and his sole military experience was an uninspired, undisciplined 80 days in the Black Hawk war. He had never lived abroad, or even been abroad, let alone served as a minister to a foreign country. Nor could he claim the benefit of a powerful mentor, or having apprenticed as secretary of state, or war, or vice president, like a number of his distinguished predecessors. And there was the unsettling matter of his temperament, the fact that he was prone to bleak depressions. How, ultimately, would this be the man to rise to the challenge?

Indeed, if Lincoln were president today, one can imagine what the foreign policy establishment, the Washington elites, and the high-minded columnists would say: Get out of the way, defer to the professionals, listen to the experts, don't ignore public opinion, seek diplomatic avenues, and most of all, listen to the military men in high command.

THAT, of course, as Eliot Cohen points out in his timely and important book, *Supreme Command*,† is precisely what the standard theory of civil-military relations counsels—that civilian leaders should defer to the military professionals. But that is precisely what Lincoln ultimately did not do; when those around him called for peace and compromise, he resolved to save the union at all costs and waged total war. Therein, Cohen reminds us, is the rub.

† Free Press. 288 pp. $25.00.

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At the heart of Cohen's book is the notion that contrary to the conventional wisdom today—soldiers should be isolated from politics but given a free hand in military matters—war is an inherently political enterprise, requiring the close supervision of political leaders. Cohen, a professor at Johns Hopkins University and one of the nation's leading strategic thinkers, draws out this theme through four case studies of civilian leaders who led their nations to stunning successes: Lincoln; Georges Clemenceau, who guided France to victory over Germany in World War I; Winston Churchill, who led Britain and rallied the West in the darkest hours of World War II; and David Ben-Gurion, who steered Israel to independence in the late 1940s.

Each of them was, to an extent, fanatical; each struck many of his countrymen as a madman. Each, in his own way, was a profound dreamer, with a kind of mystical belief in his nation. All, ultimately, were prepared to act alone, without encouragement, relying solely on their own inner resolve. And as Cohen demonstrates, each of these men, rather than sitting back passively, threw himself into the process of war: pestering and harassing generals, immersing himself in the nitty-gritty details. All of them relentlessly asked questions, probed standard assumptions, and even fired their generals when they had to. Cohen further notes, perceptively so, that as rigid as these men could be, they also were able to exercise flexibility and restraint in pursuit of their objectives.

Giants now in our day, they were often reviled in theirs. Churchill, for instance, was widely viewed as "undisciplined," "erratic," a "fantasist" and "reactionary" who peddled harebrained schemes that could have had disastrous results. But to his credit, he allowed himself to get talked out of the worst of his ideas (including an amphibious assault on northern Norway). And he was right on the big issues—on Hitler, on the importance of the American relationship, on Soviet intentions —as well as some of the smaller ones, like the need for high-tech equipment for a cross-channel landing. He was also determined not to repeat the timidity of military leaders in World War I. "You may take the most gallant sailor," Churchill memorably wrote, "the most intrepid airman, or the most audacious soldier, put them at a table together—What do you get?—the sum total of their fears!"

COHEN is on to something, especially when one considers both the zeitgeist of the present day (a near blind deference to uniformed advice) and the results of such recent con-

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flicts as Vietnam and the Persian Gulf War. In one of his more fascinating discussions, he takes issue with the accepted wisdom that many military men—and much of the cognoscenti—derived from the Vietnam War. Didn't Lyndon Johnson, Robert McNamara, and the other whiz kids, brimming with degrees from Yale and Harvard and bearing flow charts and statistical analyses from RAND, unduly intervene in the planning and the fighting? Doesn't the terrible specter of Johnson approving bombing targets rightly haunt us to this day? Weren't we fighting that war with one hand tied behind our back, hampered by esoteric theories such as "intra-war deterrence," "signaling," and "limited warfare"? Well, yes—and no.

If the civilian leadership in Vietnam, for all its glitter and credentials, was mediocre, Cohen tells us that the Joint Chiefs were even worse. President Johnson, it turns out, gave his approval for most of their targets; when he didn't, it was usually because he found the targets too provocative and feared that the military men had underestimated the threat of massive Chinese intervention of the sort that had led to disaster in Korea less than 15 years before. In one of Cohen's most trenchant observations, he writes: "There is no evidence that the generals understood any better than the civilian leadership the mentality of friend or foe, or that they had any ideas for bringing the war to a conclusion on terms acceptable to American diplomacy."

A different cloud hangs over the Gulf War. Here, unlike in Vietnam, the first Bush administration resisted interfering in military operations. But it then went a step further and, in Cohen's view, unwisely allowed the military to make crucial political judgments. The results were almost as predictable as they were tragic: Colin Powell played a significant role in calling for the ground war to end at its one-hundredth hour, thus ending the so-called "highway of death" (the administration feared negative media publicity), and leaving Saddam Hussein and his Republican Guard in place. One doesn't have to minimize the extraordinary achievement of the Gulf War in evicting Iraq from Kuwait to come to the conclusion that we are now living with the results of the disastrous decision to abort the war too early. In Cohen's formulation, both the Vietnam and Gulf War are telling examples of a deadly combination of what he calls "inept strategy and excessively *weak* civilian control."

Given this, one must wonder how we got to the point that the nation's civilian leadership finds itself in such thrall of the

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military. For context, Cohen quotes Lincoln biographers John Nicolay and John Hay on this issue: "War and politics, campaign and statecraft, are Siamese twins, inseparable and interdependent; and to talk of military operations without the direction and interference of an administration is as absurd as to plan a campaign without recruits, pay or rations." Is the problem, then, the ghost of Vietnam? (Yes, says Cohen.) Are sweeping pieces of legislation like the 1986 Goldwater-Nichols law, meant to enshrine "the lessons of Vietnam," the answer? (Not so fast, argues Cohen.) And is the answer simply a matter of rejecting the standard theory of civil-military relations in favor of Lincolnian statesmen who bone up on military strategy, set overarching goals, and exert careful oversight? This is where the matter gets somewhat stickier.

THE harder cases, of course, involve not the rare few—leaders like Lincoln, Churchill, Ben-Gurion, and Clemenceau—but the more commonplace, mediocre, and flawed leaders, those whose judgment is lacking, whose perception is poor, or whose timing invariably seems ill-fated. Take Jimmy Carter, for instance. Well-meaning and one of the brightest men to inhabit the presidency, he exercised such a mastery of detail that he knew the throw weights of nuclear missiles better than his own generals. Armed with tabbed briefing books, which he often took home overnight, he too refused to play to the tune of the normal civil-military relations. But Carter's dismal attempted rescue of the Iranian hostages in Desert One stands as one of the most flawed military operations in this nation's history. (Under very different circumstances, Gerald Ford's botched Mayaquez rescue attempt wasn't much better.)

Cohen writes: "A great statesmen is a rarity, and an average politician who poses as a Churchill or a Lincoln may come to grief. But it is also the case that a mediocre statesmen who resorts to rules of thumb—including 'defer to the professional' is heading, and probably by a shorter path, to ruin." This is a subtle but crucial point. Cohen is almost certainly correct that blindly deferring to military professionals is a path to ruin, but it is also clear that successful civilian leadership cannot on its own be reduced to lists or rules or precooked prescriptions.

Consider the Vietnam and Gulf War examples again. While it is true that Johnson and to some extent Bush Sr. failed to ask the right questions, they hardly failed to ask questions, to set overarching goals, or to impose their visions, however limited. It remains a fact that in almost every administration, the

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actions of civilian and military leaders reflect the wisdom and judgment at the top, not the other way around. For all his meddling, Johnson never stumbled into finding the right generals, or the right civilian aides, or the right strategy, or the right way to deal with the morass of public opinion. And to the extent that the elder Bush ceded political judgments to the military, their views perfectly accorded with his own.

LEADERSHIP remains one of the great mysteries of history. Why do some have it, and others don't? Why are second-rate leaders always shaped and prodded and manipulated by the forces of history in terrible crises, while great ones find ways to bend those forces to their goals? Why do some leaders lose winnable wars and others win losable wars?

One should not come away from Cohen's book thinking that we don't need sound military leadership—we desperately do. But sound military advice is rarely sufficient on its own. With considerable verve and rigor, Cohen's *Supreme Command* has convincingly spelled out an important corrective to the deadly tonic that civilian leaders should automatically defer to the military. In the final analysis, in the great matters of war and peace, there is no substitute to having vigorous and wise leadership at the top.

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Juries on trial

KEN I. KERSCH

THE nations of continental Europe, whose civil-law legal systems are structured around logically designed statutory schemes, take pride in the rationality and efficiency of their public regulations and of the governmental institutions that implement them. This is especially true for their systems governing civil injuries, which seek to compensate the injured for the damages they suffer (such as hospital bills and lost wages) and to punish and deter negligent or reckless conduct. These nations rely heavily on bureaucracies to assess penalties and on national health care to fund the costs of injury. Given their emphasis on clear goals and efficient institutions, it is not surprising that civil-law nations do not use juries to decide civil cases of any type, including tort cases, and rarely use juries in criminal cases either. Lay jurors, after all, are untrained, one-shot participants who dive headlong into a bramble of factual, legal, and public policy complexity. They are wild cards, and hence are the enemy of rational, systematic thinking.

Viewed charitably, the American approach to torts, or civil injuries, is a patchwork. Viewed uncharitably, it is a mess. Although even in our "underdeveloped" state some areas (such as workers' compensation schemes) have been signed over to bureaucratic management, the problem of civil injury in America remains largely the province of the courts, which address it in thousands of individual trials that crop up every year in the nation's state and federal courts. For lack of a better word, we can call this a "system." But it is pretty unsystematic. And our willingness to accept the routine involvement of juries in these cases, which include accident, medical malpractice, and products-liability suits, reveals a high tolerance for haphazardness that would drive a European statist to distraction.

American tort cases proceed through a series of phases. In the initial, liability phase of the trial, the court asks first

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whether the plaintiff has been injured and second whether the defendant is legally responsible for that injury. If the defendant is found legally liable, the trial moves to its compensatory damages phase, in which the court assesses the amount of money that would make the plaintiff "whole" again and compensate adequately for the injury. The calculations here involve, among other things, hospital bills, loss of income, and pain-and-suffering. Only after liability has been determined and compensatory damages set does the court move on to the third, or punitive damages, phase of the trial. In that phase, the court asks whether the defendant's conduct was reckless enough to warrant an additional assessment as punishment and as a deterrent for the defendant and others. If the court finds that punitive damages are in order, it then attempts to determine their proper amount.

As currently structured, then, the liability and compensatory damages phases of American tort cases take up questions of private law: They look backward to a past event, and seek to do justice between parties by making the injured party whole. But in its punitive damages phase, the tort case takes up questions of public policy, looking forward to set a system of incentives that will shape future conduct. The rulings in all of these matters are subject to the judgment of a lay jury.

But now tolerance for the involvement of juries in the forward-looking phase of the trial has long since worn thin. While criticisms of citizen juries have covered all stages of the civil trial (and, for that matter, their performance in criminal trials as well), the din concerning the role of juries in setting punitive damages awards has been especially loud. This is because the skyrocketing amounts of those awards, as well as their volatility, besides being often unjust to individual defendants, wreak havoc with both business planning and the formulation of sound and consistent public policy. A single huge award, or the threat of such an award, can stifle initiative, thwart economic planning, bankrupt a business or an industry, and remove useful products from the market.

THE new compilation *Punitive Damages: How Juries Decide*† offers us an interrelated series of methodically calibrated and lucidly presented studies of "what juries do and why they do it" in high-stakes corporate tort cases. The book's

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chapters, which are separately authored, effectively weave together three distinct yet related lines of research, much of it first published in law and behavioral science journals. This research includes W. Kip Viscusi's empirical work on risk reduction, Reid Hastie, John Payne, and David Schkade's study of the relationship between public policy and the psychology of jury behavior, and Daniel Kahneman, Cass Sunstein, and David Schkade's investigation of the determinants of the dollar amounts of administrative penalties and jury awards. George Priest contributes a preface that sets the project in broader context. Given that the book coheres as a unified work, and that tracing specific findings to individual authors would be a distraction, I will henceforth attribute all of the book's findings collectively to its "authors."

Viewed as a whole, *Punitive Damages* takes the American practice of placing liability and compensatory damages decisions before juries more or less for granted; its chief concern is with the punitive damages phase of the trial. With a continental sensibility that has long since been embraced by common-law countries other than the United States, the authors determine our system to be anything but a rational and efficient means of regulating civil injury. To remedy the situation, they offer a series of reforms that would remove the determination of punitive damages from juries and place it on a more rational foundation. The authors make a good case for their proposals, but they understate the break these reforms would make with American legal and political tradition, which has placed great moral weight on the role of the jury in a democracy.

At the start, the authors rather peremptorily announce that punitive damages awards in tort cases have a single social purpose, which is to set an optimal level of deterrence that punishes undesirable behavior while leaving risky but, on balance, desirable behavior unimpeded. The studies presented here, involving methodologically varied case simulations played out in laboratory settings, provide abundant evidence—to the extent that results of studies of this sort can be generalized to the real world—that the decisions made by civil jurors concerning punitive damages awards are wildly inconsistent and irrational. This being the case, the authors conclude, juries fail miserably at their task of deterrence.

Of course, it has long been asserted in both polemical and scholarly works that juries are not likely to do well when

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presented with complex facts, and that they are easily swayed by prejudices and emotions rather than heeding the law. Thus the authors' discovery that juries do poorly in tracking legal standards and mimicking what mathematical calculations of optimal deterrence would arrive at is hardly surprising. What is surprising is their finding that juries' failures in this regard fall into distinct and identifiable patterns. The authors of *Punitive Damages* can plausibly claim that they have broken new ground by training a bright light on what Walter K. Olson has called "the inscrutable emissions of mysterious black boxes of punishment"—civil juries—and rendering them inscrutable no more. In this regard, *Punitive Damages* is a major achievement.

MANY of the authors' findings are striking. They discover that American civil jurors, no matter what their race, sex, age, education, or income, are consistent in their rankings of a defendant's blameworthiness. But in translating their moral outrage into a dollar scale for the purposes of awarding punitive damages, the authors find that jurors are all sail and no anchor. Only 5 percent of the jurors in the studies presented here remembered and understood the judge's instructions setting out the legal standard for their task, and this ignorance held even when the jurors were provided with memory aids, including various forms of written reminders. No matter what they were told by the judge—and even when they were given simple, precise formulas to calculate awards—jurors routinely cast the judge's legal instructions aside and made recourse to their own intuitions, drawn from what the authors call "everyday morality."

These shortcomings fit with longstanding complaints about the rationality of civil juries. Other inadequacies, however, were novel. The authors found, for instance, that far from making punitive damages awards more rational, deliberation increased their severity and unpredictability. Moreover, despite painstaking instructions and warnings, civil jurors consistently fell prey to a profound "hindsight bias," by which they saw any accident that did happen as an accident that was waiting to happen. So, for example, when participants in these studies were presented with a fact scenario concerning the operation of a railroad and were asked if they would approve of its continuing operation without further safety precautions, two-thirds of them said "yes." But when they were presented

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with precisely the same facts, and were then told that an accident had occurred, the same proportion had little trouble concluding that the railroad's decision to operate without taking further precautions had been reckless and therefore warranted the award of punitive damages.

ONE of the central discoveries of *Punitive Damages* is that civil jurors seem to have an ironclad aversion to the use of a formal calculus to make decisions about safety procedures. Any time evidence came to light that a company had performed a cost-benefit analysis in deciding what safety precautions to take in a given circumstance, the level of punitive damages awarded spiked upwards. The dynamics at work here are familiar enough to anyone tutored in Ralph Nader's moral cosmology: Cost-benefit analyses are said to demonstrate how depraved corporations "put a price tag on human life." As the experiment on hindsight bias—not to mention common human experience—illustrates, however, neither businesses nor individuals can function without "putting a price on human life." Each time we get into a car, step onto an airplane, swim in the ocean, or head to the city, we put a price on human life; we take a risk after either calculating or assuming that it's worth it. To operate in the real world, businesses are forced to make similar calculations concerning the lives of others. If something happens to go wrong, however, the willingness of companies to calculate these risks explicitly is taken by juries as a sign of the moral degeneracy of corporate America.

To add insult to injury in these matters, the authors found that the *higher* the value that a company places on a human life in its cost-benefit calculations, the *higher* the damages awarded. The culprit here is an "anchoring effect" by which the jurors, at sea in their task of attaching a dollar amount to the alleged transgression, grabbed pretty much any number at hand as the base point for their calculations. These numbers include the (legally irrelevant) amount asked for by the plaintiff's attorney (the more he asked for, the more he got), and the (legally irrelevant) level of compensatory damages, as well as the valuation of human life drawn from the company's internal cost-benefit analysis. Needless to say, aside from being unfair to individual defendants, these anchoring effects are a recipe for pervasive irrationality and volatility, and more broadly, for the setting of spectacularly bad public policy concerning matters of civil injury.

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WHILE *Punitive Damages* is primarily a work of description, its authors properly assert that their findings "have large implications for law and legal reform." What they propose is that, while juries in these cases would continue to judge liability, judges would either determine the amount of punitive damages themselves or take a more active role in overseeing jury awards. Judges might, for example, use cross-case comparisons to eliminate extravagant punitive damages verdicts. More ambitiously, the authors propose that, consistent with the broader movement toward administration in the United States which has occurred over the course of the twentieth century, we put in place a system of civil fines. In such a system, the amount of punitive damages would be set through rationally calculated grids and schedules of the kind used in determining Social Security benefits, workers' compensation, criminal sentencing, and damage assessments by administrative agencies like the Environmental Protection Agency and the Occupational Safety and Health Administration. These matrices provide a menu of predetermined awards and penalties based on a series of categorical determinations involving such factors as the status of the beneficiary or defendant and the magnitude and willfulness of the offense.

All this seems sensible. But the discoveries in *Punitive Damages* that inspire these policy recommendations are so striking that they inevitably raise larger questions concerning the "everyday morality" and cognitive capacities of juries—questions that vault us beyond the realm of social science (where the authors would prefer to keep things) and into the much messier realm of politics. For instance, in light of their findings, it seems worthwhile to ask why we should hand more power to judges in the punitive damages phase of the trial, or even remove juries from this phase altogether, but leave these same juries to their follies in other areas. The authors indicate that they are content to preserve the status quo in the liability and compensatory damages phases of the trial. But if the American juror is systematically irrational and suboptimal in setting award amounts, why shouldn't juries be subject to greater supervision when deciding compensatory awards? And what about the liability determination itself? Obviously, policy makers in other countries have long since traced out this logic—which is why they don't allow for the recovery of punitive damages in most trials and have generally eliminated civil juries altogether.

To be sure, the authors can safely float their findings in

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the narrower area of punitive damages on the assumption that Americans aren't likely to push these issues, at least for now. And the reason why we are unlikely to follow this road to its end, however sensible from a policy perspective, has to do not with social science but with history and politics.

THAT both criminal and civic juries thrive in our legal system is one of the more dramatic instances of American exceptionalism. Juries persist in the United States because they are accorded unique constitutional and cultural status. Article III and the Sixth Amendment guarantee the defendant's right to a jury trial in all criminal cases, while the Seventh Amendment—which, unlike the Sixth, has never been held to apply to the states—provides for a jury trial in all federal civil suits "at common law, where the value in controversy shall exceed twenty dollars." These unusual guarantees are the product of our unique colonial politics and history, and over time became embedded in the institutional architecture of the country.

The importance the founding generation attributed to trial by jury is directly attributable to its experiences with Crown-controlled judges sitting with juries composed of colonists. Given the uncertainties about the sources of law on the far-flung edges of the Empire, colonial juries were active both with finding facts and with making law in individual cases. Moreover, colonial juries in the sparsely populated colonies were put to very broad use. They were charged not only with deciding lawsuits but also with serving as legislative platoons that took up many of the day-to-day tasks of local governance and operated almost completely outside the purview of imperial authority. During the revolutionary crisis, the opposition between the English colonial judge, applying imperial law in the service of imperial policy, and the locally drawn jury, applying whatever law made sense in light of its members' own experiences and their sense of justice, strengthened the general regard for the jury. Given this history, it is hardly surprising that the founding generation found it difficult to imagine a commitment to self-government without according a significant place to trial by jury. When, out of deference to the diverse procedures of the states, a guarantee of a civil jury trial was left out of the constitutional text, the staunchest partisans of local democracy, the Anti-Federalists, did their best to scuttle the entire Constitutional project.

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It's not the jury alone that can claim this hoary lineage. The power of juries to award punitive damages in civil injury cases has its own impeccable political pedigree. The first case in Anglo-American law in which a jury awarded damages above the amount necessary to compensate the plaintiff financially for his loss, in an effort to punish the defendant and deter him and others, was the famous Wilkes case of 1763. In that case, the English M.P. John Wilkes successfully sued the Crown for ransacking his home in an effort to discover who had been penning political pamphlets attacking the policies of King George III (as Wilkes indeed had been). In the process, Wilkes sent American veneration for the jury into the stratosphere, along with the admiration Americans had for its prerogative to award punitive damages. (The Wilkes case also inspired the Fourth Amendment's search-and-seizure and warrant provisions, not to mention the names of a host of towns and counties named either for Wilkes himself or for Lord Camden, the judge who presided over the case.)

Subsequently, punitive damages—of moderate amounts in line with compensatory damages awards—were routinely awarded by juries throughout American history. Known as "exemplary" or "vindictive" damages, and also as "smart money," they were awarded mainly in cases of deliberate or intentional torts, such as assault and battery, libel and slander, and trespass. In short, we have long had a strong moral and political commitment to jury participation in these matters.

ALL the same, though, we must admit that in recent years the world has changed. A series of decisions by state and federal legislatures and judges over the course of the twentieth century—and especially since the 1960s—as well as changes in cultural attitudes about government power and risk, have radically restructured the entire civil justice system. In the process, the frequency, volatility, and levels of punitive damages awards were altered. Today's civil juries operate in a veritable funhouse of class actions, forum shopping, contingency fees, insurance (once considered immoral), and a full-time lawsuit industry that was, of course, unknown in the eighteenth and nineteenth centuries. Moreover, today the elimination of risk is taken to be one of government's animating purposes. A proposition once never considered—that punitive damages would be awarded not only in cases of willful misconduct but also in those involving mere negligence—has become routine practice. It is in this institutional and political context

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that we must consider whether the old but very real political claims of the civil jury to determine punitive damages and other matters have been rendered obsolete.

Put otherwise, we must now ask whether the capacity of the people for self-government in matters of civil injury has been either so thwarted or so corrupted that it is now necessary to take away from them one of their traditional political prerogatives. However, despite the ostensibly neutral language of cognitive psychology employed in *Punitive Damages*, and the book's deceptive implication that its policy contentions flow ineluctably from the empirical findings of its social scientific investigations, the role of juries is ultimately and inevitably a political question.

ON balance, the authors make a good case that the reforms they call for are now in order. If they are necessary, however—and I think that they are—it should be acknowledged that they represent a significant diminishment of the role of the nation's unique institutional home of direct democracy. This will make the American system more systematic, rational, and efficient, like that of the Europeans. It sets a clear and singular goal—optimal deterrence—and works to ensure that state policy more consistently serves that purpose. But the United States has always had a more democratic political system than the Europeans. If the recommendations of *Punitive Damages* are followed, the gap will be closed in yet another limited but important way.

A proposal for reform more respectful of the nation's longstanding tradition of allowing juries to set punitive damages awards would place greater emphasis on the fact that the most egregious verdicts in products liability and other mass tort cases are often reduced by a significant amount on appeal. It might focus on ending contingency fee attorney-payment plans, or on securing the adoption of a "loser pays" rule, or on placing new statutory limits on the relentlessly increasing tendency of judges and juries to turn every human misfortune into a matter of legal liability. But the political obstacles to the enactment of these proposals are probably nearly as great. And like other tort reform proposals, such as punitive damages caps and schedules tying punitive damages awards to compensatory damages awards, both of which the authors of *Punitive Damages* consider and reject, they bear no tight relation to the singular goal of optimal deterrence.

The authors of *Punitive Damages* are smart to present their

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reforms as an apolitical means of bringing the American civil justice system in line with the latest findings of cognitive science. But they really are savvy players in a long-running political game. What they in fact recommend is that we jettison an American tradition, with the more or less admirable goal of cutting our losses from the collapse of other American traditions—those concerning the limits of tort liability—which has occurred over the course of the last century. It is through such serial discardings that the nation modernizes and develops. The antidemocratic initiatives that the authors of *Punitive Damages* propose seem to be initiatives whose time has come.

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Defending the Constitution

ROBERT GOLDWIN

ROBERT A. Dahl, one of America's most prominent political scientists, asks us in his latest book to judge the Constitution in the light of a single criterion: By present-day standards, how democratic is it? Dahl examines just about every provision of the Constitution—those regarding the legislatures, the presidency, the courts, election methods, the federal structure, the party system, and more—and finds them all unacceptably undemocratic.

Dahl tells us at the very outset of *How Democratic Is the Constitution?*† that his purpose is modest: "My aim in this brief book is not to propose changes in the American Constitution but to suggest changes in the way we *think* about our constitution." But it becomes clear that his intention may not be modest at all, when, just one page later, he poses this devastating question: "Why should we feel bound today by a document produced more than two centuries ago by a group of fifty-five mortal men, actually signed by only thirty-nine, a fair number of whom were slaveholders, and adopted in only thirteen states by the votes of fewer than two thousand men, all of whom are long since dead and mainly forgotten?"

Dahl is not posing this question rhetorically in order to explain why we should continue to "feel bound" by the Constitution. Instead, since no one alive in the United States today has ever been asked "whether they wished to continue to be governed under the existing constitution," Dahl is challenging its very legitimacy. If the Constitution has no legitimacy, if there is no reason for us to be bound by it as the foundation of our national political life, the consequences are indeed profound.

What are some of Dahl's specific complaints? He devotes a chapter to the electoral college and finds the usual faults—

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that the original design had major flaws that had to be corrected by amendment, after which it was still unworkable; that the electors are nonentities, not individuals of superior judgment as was at first anticipated; that small states have more electoral votes than should be their due based strictly on population; and, most important, that the candidate with the most popular votes may not win the election.

DAHL makes much of the fact that the Framers struggled over how the president should be selected. At times in the Constitutional Convention they considered having the president chosen by the state legislatures, at other times by Congress; then they changed their minds and brought the question up again, more than once. The final decision was made only in the closing weeks of the convention. Dahl presents this information as evidence that the delegates were "baffled and confused" and eventually came to a consensus only because they were tired and had run out of time.

But the delegates were struggling with a problem for which they had no guiding precedent. Election of the president by popular vote was considered impractical, given the great extent of territory and the inadequacy of communication. But what were the alternatives? They sought to establish a sufficiently powerful executive who would be independent from national and state legislatures. If separation of powers and checks and balances were to work, the president must not be made beholden for his election to one of the other branches of government. One can well imagine what pledges might be squeezed from a presidential candidate by Congress or by state legislators had either of those bodies the power of presidential appointment. But if the president was not to be selected by one of the regular institutions of government, what else was there?

The solution the Framers finally arrived at was to invent a one-time, one-task, widely dispersed body of electors, who would assemble in their own states, and whose only function would be to cast their votes for president and vice-president and then disband. And thus the president would not be beholden to any existing body for his election.

As everybody knows, the original arrangement worked for only two elections before breaking down, and has since been revised over and over again. But what remains of the electoral college is a prime target for Dahl's democracy test: Every state has the same number of electoral votes as members in

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the House of Representatives and the Senate, and this gives the smaller states more votes than Dahl thinks they deserve. And the electoral winner may have a minority of the popular vote, which Dahl denounces as clearly offensive to democratic standards. Additional insults to democracy result from the almost universal practice, not provided for in the Constitution, of states awarding all of their electoral votes to the candidate who carries the state vote, no matter how slim the margin, instead of dividing them according to the proportions of the popular vote in the state.

WHAT can be said of this condemnation of the electoral college? It is worth dwelling on this facet of Dahl's complaints because the electoral college encompasses much of what he finds objectionable in the American constitutional system: federalism, winner-take-all elections, the two-party system, bicameralism, and the composition of the Senate.

The Constitutional Convention made its great breakthrough when it hit on the plan for satisfying both the big states and the small states. There would be two houses of the legislature, based on two different schemes of representation, one apportioning seats on the basis of the equality of the states, the other based on the unequal size of the populations of the states. Senators would be chosen by the state legislatures, two senators from each state, each with one vote, while Representatives in the House would be apportioned among the states according to the respective numbers of persons in each state.

Dahl denounces this arrangement as undemocratic. His objection is to the vast difference in size of populations. California's population, for example, is 34 million, and Nevada's is 2 million; since both states have two senators, "the vote of a Nevada resident for the U.S. Senate was, in effect, worth about seventeen times the vote of a California resident." And since electoral votes are equal to the number of the state's representatives plus the two senators, a smaller but similar disparity results: "The vote of a Wyoming resident, for example, is worth almost four times the vote of a California resident in the electoral college."

How seriously should we concern ourselves with this arithmetic imbalance? In the 2000 presidential election, there were eight states, like Wyoming and Nevada, with three electoral votes, and six more states each with four electoral votes; all fourteen of those states combined were outweighed in the electoral total by California. Should California voters share

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Dahl's complaints about the excessive power of the voters in Nevada and Wyoming? Dahl's concerns are mathematical abstractions with almost no political relevance.

If we start from the fact that the United States is, for solid reasons, a federal democracy, not a unitary democracy, we must accept the consequence that numerical equality in every aspect of our politics is not to be expected. Districting is at the heart of the way we are constituted, and it is not possible to make every district equal. The states are districts in the national scheme, and within each state there are districts within districts. My Montgomery County, Maryland, voter's card shows that I live and vote in congressional district eight, school board district three, state legislative district eighteen, county councilmanic district one, and election district precinct seven. The federal scheme, whose foundation was laid when the Framers established the equality of the states in the Senate, has institutionalized this remarkable democratic abundance of local governing and local politics. But along with this state and local political activity and decentralization of power, we must accept the burden of complexity and an inescapable measure of inequality (both of which Dahl deplores), not only in the electoral college but wherever we have district-based elections. As Martin Diamond pointed out decades ago, "Since 1900, control of the House has gone four times (1910, 1916, 1938, 1942) to the party that lost the national popular vote."

Well then, what of the defect that the candidate with the most popular votes may lose the electoral vote? This may have happened in 2000 and may have happened in 1888, and it may happen again when the popular vote is so close, practically a tie, that the tally is very much in doubt. But the great scandal of the 2000 presidential election was not the consequences of the electoral college but rather the inaccuracy of the voting apparatuses in Florida and around the country, incapable of reliably discerning the winner of the popular vote when the margin at the state and national levels is a fraction of 1 percent.

HOW should we judge Dahl's treatise on the Constitution? Dahl began "by posing a simple question: *Why should we Americans uphold our Constitution?*" After all, how many Americans, "have ever participated in a referendum that asked them whether they wished to continue to be governed under the existing constitution? The answer, of course, is: none." This is outrageously misleading.

Dahl ignores or overlooks the tacit consent quietly given by

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law-abiding citizens in the ordinary course of their daily lives. But if that is not enough, if he must hear it spoken out loud, then consider every naturalized citizen, and all those who have served in any branch of the military. They have vocally pledged to be bound by the Constitution. And countless more Americans—legislators, both federal and state; "all executive and judicial officers"; and anyone who has held any appointed civilian position, federal, state, or local—in short, millions and millions of us from the beginnings of the nation up to the present moment have "bound" ourselves, "by oath or affirmation, to support this Constitution."

You can look it up, Professor Dahl: Article VI of the Constitution.

STATEMENT OF OWNERSHIP, MANAGEMENT, AND CIRCULATION
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C. Total paid and/or requested circulation	6,141	6,381
D. Free distribution by mail		
1. Outside county	546	648
2. Inside county	377	487
E. Free distribution outside mail	174	173
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G. Total distribution	7,238	7,689
H. Copies not distributed	1,669	511
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CONTRIBUTORS

ROBERT C. BARTLETT is associate professor in the Department of Political Science at Emory University and author of *The Idea of Enlightenment* (University of Toronto Press, 2001).

DOUGLAS J. BESHAROV is the Joseph J. and Violet Jacobs Scholar in Social Welfare Studies at the American Enterprise Institute and a professor in the University of Maryland School of Public Affairs.

J. BOTTUM is Books & Arts editor of the *Weekly Standard* and author of *The Fall & Other Poems* (St. Augustine's Press, 2001).

WILLIAM A. GALSTON is a professor in the University of Maryland School of Public Affairs and author of *Liberal Pluralism* (Cambridge University Press, 2002).

ROBERT GOLDWIN is a resident scholar in constitutional studies at the American Enterprise Institute and author of *From Parchment to Power* (AEI Press, 1997).

HOWARD HUSOCK is director of case studies in public policy and management at the John F. Kennedy School of Government at Harvard University and author of *Repairing the Ladder* (Reason Foundation, 1996).

LEON R. KASS is the Roger and Susan Hertog Fellow at the American Enterprise Institute, professor in the Committee on Social Thought at the University of Chicago, and chairman of the President's Council on Bioethics.

KEN I. KERSCH is assistant professor of politics and faculty associate in the James Madison Program in American Ideals and Institutions at Princeton University.

DOUGLAS MOSSMAN is professor and director of forensic psychiatry at the Wright State University School of Medicine and an adjunct professor at the University of Dayton School of Law.

CHARLES MURRAY is a senior fellow at the American Enterprise Institute and coauthor of *The Bell Curve* (Free Press, 1994).

DIANA SCHAUB is associate professor of political science at Loyola College in Maryland and author of *Erotic Liberalism* (Rowman & Littlefield, 1995).

JAMES Q. WILSON is professor of public policy at Pepperdine University and professor emeritus at UCLA.

JAY WINIK is author of *April, 1865: The Month That Saved America* (HarperCollins, 2001), which will be a feature documentary in the spring of 2003 on the History Channel.

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